(27,271)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 516.

CHIPMAN, LIMITED, PLAINTIFF IN ERROR,

vs.

THE THOMAS B. JEFFERY COMPANY.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 23, 1919.

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1 Supreme Court of the State of New York, County of New York.

Law. No. 246.

CHIPMAN, LTD., Plaintiff,

against

THE THOMAS B. JEFFERY COMPANY, Defendant.

Summons.

To the above named Defendant:

You are hereby Summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated, New York, March 17, 1919.

HAYS, HERSHFIELD & WOLF,
Plaintiff's Attorneys.

Office and Post Office Address No. 115 Broadway, Borough of Manhattan, New York City.

2 [Endorsed:] Supreme Court of the State of New York, County of New York. Chipman, Ltd., Plaintiff, against The Thomas B. Jeffery Company, Defendant. Summons. Hays, Hershfield & Wolf, Plaintiff's attorneys. 115 Broadway, Borough of Manhattan, New York City. Filed July 9, 1919.

3 Supreme Court of the State of New York, County of New York.

CHIPMAN, LTD., Plaintiff,

against

THE THOMAS B. JEFFERY COMPANY, Defendant.

CITY AND COUNTY OF NEW YORK, *ss:*

Henry Ableson, being duly sworn, deposes and says:

That he is over the age of twenty-one years. That on the 17th day of March, 1919, at Nos. 13-21 Park Row, in the Borough of Manhattan, City of New York, he served the annexed summons upon The Thomas B. Jeffery Company, the defendant in this action, by deliv-

ering to and leaving a true copy thereof with Philip B. Adams, the person designated by said defendant upon whom service of process might be made within the State of New York.

That he knew the person so served to be Philip B. Adams, designated by the defendant, as aforesaid.

HENRY ABELSON.

Sworn to before me this 18th day of March, 1919.

HENRY H. KAUFMAN,
Notary Public, N. Y. Co.

[Endorsed:] Filed July 9th, 1919.

4 Supreme Court of the State of New York, New York County.

CHIPMAN, LTD., Plaintiff,

against

THE THOMAS B. JEFFERY COMPANY, Defendant.

SIRS:

Please take notice, that the defendant, The Thomas B. Jeffery Company, appears in this action specially for the sole and single purpose of removing this case to the Federal Court and objecting to the jurisdiction of the Court; and that I am retained as attorney for the defendant herein, and demand that a copy of the complaint in this action be served on me at my office No. 21 Park Row, in the Borough of Manhattan, City, County and State of New York.

Dated, New York, April 7th, 1919.

Yours, &c.,

PHILIP B. ADAMS,
Attorney for the Defendant,
Appearing Specially Herein.

Office & P. O. Address, 21 Park Row, Borough of Manhattan, City of New York.

5 [Endoresd:] New York Supreme Court, New York County. Chipman, Ltd., plaintiff, against The Thomas B. Jeffery Company, defendant. Special appearance. Philip B. Adams, attorney for defendant. Office and P. O. address 21 Park Row, Borough of Manhattan, New York City. Filed July 9th, 1919.

6 Supreme Court of the State of New York, County of New York.

CHIPMAN, LIMITED, Plaintiff,

against

THE THOMAS B. JEFFERY COMPANY, Defendant.

The plaintiff above named, by Hays, Hershfield & Wolf, its attorneys, complains of the defendant and alleges:

For a First Cause of Action:

I. That at all of the times hereinafter mentioned, the plaintiff was and still is a domestic corporation, duly created and existing under and by virtue of the laws of the State of New York.

II. That at all of the times hereinafter mentioned, the defendant was and still is a foreign corporation, duly created and existing under and by virtue of the laws of the State of Wisconsin.

III. That at all of the times hereinafter mentioned, the defendant was and still is engaged in the business of manufacturing and selling motor cars, and parts thereof and therefor; that said motor cars were known as "Jeffery" Motor Cars and "Rambler" Motor Cars.

7 IV. That heretofore and on or about January 23, 1914, an agreement in writing was made by and between the plaintiff and the defendant, copy whereof is hereby annexed marked "Exhibit A" and hereby made a part hereof. Therein and thereby it was mutually agreed between them that the plaintiff should have the sole right to sell motor cars and parts thereof and therefor, manufactured, sold or dealt in by the defendant, in the following territory, to wit: Europe, including England, Ireland, Scotland and Wales; Australia and New Zealand; Argentine Republic, Chili, Peru, Uruguay and Brazil, in South America; Philippine Islands; Hongkong; Singapore and Java; Straits Settlements; India, Burma, Siam and China; Mexico; West Indies, including Cuba and Porto Rico; the Windward and Leeward Islands, and the Mediterranean countries of Africa; that all inquiries for such motor cars and parts thereof and therefor received by defendant from, in or for such territory, should be referred to the plaintiffs; that such motor cars and parts thereof and therefor should be sold at list prices; that the defendant should and would use and exercise diligence in filling orders for motor cars and parts thereof and therefor, in or for said territory; that the plaintiff should pay for such motor cars and parts thereof and therefor, the plaintiff in turn making collections thereof from the purchasers in such territory; that the defendant should pay to the plaintiff, and the plaintiff should receive from the defendant, as its compensation, twenty and ten per cent. (to wit.
8 twenty-eight per cent.) from the list prices on all "Jeffery" motor cars, and thirty per cent. on all parts thereof and there-

for (not including, however, extra tires), sold to, in, or for said territory, and ten per cent. of and from the following list prices of "Rambler" motor cars, and parts thereof and therefor, to wit:

Rambler Cross-Country	$1,250.00
Rambler Seven-passenger Cross-Country	1,383.34
Rambler Roadster	1,210.00
Rambler Gotham	2,000.00

sold to, in, or for said territory.

V. It was further therein mutually agreed by and between plaintiff and defendant that the aforesaid agreement should be in force and effect up to and including July 31, 1914, upon condition, however, that in any territory covered thereby in which plaintiff should have established an active agency from which orders for motor cars were received and accepted prior to July 31, 1914, the said agreement should continue in full force and effect for one year thereafter, to wit, until July 31, 1915.

VI. That the plaintiff thereupon entered upon the performance of said agreement, and duly performed all the terms, conditions and provisions thereof by it to be performed.

VII. That thereafter, and between January 23, 1914 and prior to July 31, 1914, plaintiff established an active agency in the following territory covered in and by said agreement marked Exhibit A", for said motor cars, from which, between said dates, orders
9 therefor were received and accepted, to wit, Europe, including England, Ireland, Scotland and Wales, France, Finland, Sweden, Denmark, Greece and Russia.

VIII. That thereby, and under and pursuant to said agreement marked "Exhibit A", said agreement continued in force and effect up to and including July 31, 1915, in, to, or for the following territory, to wit, Europe, including England, Ireland, Scotland and Wales, France, Finland, Sweden, Denmark, Greece and Russia.

IX. Upon information and belief that during the period covered by the aforesaid agreement marked "Exhibit A", to wit, January 23, 1914, to and including July 31, 1915, the defendant, in violation of the aforesaid agreement, manufactured, sold and delivered, at list prices, in, to, or for Europe, including England, Ireland, Scotland and Wales, France, Finland, Sweden, Denmark, Greece and Russia, a large number of said motor cars and parts thereof and therefor, manufactured, sold or dealt in by the defendant, and wholly failed to refer the inquiries therefor to plaintiff or to permit the plaintiff to make such sales and deliveries.

X. Upon information and belief, that the value of said "Jeffery" and "Rambler" motor cars and parts thereof and therefor, manufactured, sold and delivered by the defendant during the period from January 23, 1914 to and including July 31, 1915 in, to, or for Europe, including England, Ireland, Scotland and Wales, France,

Finland, Sweden, Denmark, Greece and Russia, is at least the sum of one million dollars ($1,000,000.)

10 XI. That the discount, commission or profit of the plaintiff thereon, under and pursuant to the aforesaid agreement, is at least Two hundred and eighty thousand dollars ($280,000). That the defendant has failed, neglected and refused to pay to plaintiff the discount, commission or profit to which the plaintiff is entitled thereon, under and pursuant to the foregoing agreement.

XII. That by reason thereof, there is due, owing and unpaid from defendant to plaintiff the sum of Two hundred and eighty thousand dollars ($280,000), with interest thereon from July 31, 1915, no part of which has been paid, although heretofore duly demanded.

For a second cause of action, plaintiff alleges:

XIII. That at all of the times hereinafter mentioned, the plaintiff was and still is a domestic corporation, duly created and existing under and by virtue of the laws of the State of New York.

XIV. That at all of the times hereinafter mentioned, the defendant was and still is a foreicn corporation, duly created and existing under and by virture of the laws of the State of Wisconsin.

XV. That at all of the times hereinafter mentioned, the defendant was and still is engaged in the business of manufacturing and selling motor trucks, and parts thereof and therefor.

XVI. That heretofore, and on or about January 24, 1914, an agreement in writing was made by and between plaintiff and
11 defendant, copy whereof is hereto annexed, marked "Exhibit B" and hereby made a part hereof. Therein and thereby it was mutually agreed between them that the plaintiff should have the sole right to sell motor trucks, and parts thereof and therefor, manufactured, sold or dealt in by the defendant, in the following territory, to wit, Europe, including England, Ireland, Scotland and Wales; Australia and New Zealand; Argentine Republic, Chile, Peru, Uruguay and Brazil in South America; Philippine Islands; Hongkong; Singapore and Java; Strait Settlements; India; Burma; Siam and China; Mexico; West Indies, including Cuba and Porto Rico; the Windward and Leeward Islands, and the Mediterranean ports of Africa; that all inquiries for such motor trucks, and parts thereof and therefor, received by defendant from, in, or for such territory, should be referred to the plaintiff; that such motor trucks, and parts thereof and therefor, should be sold at list prices; that the defendant should and would use and exercise diligence in filling orders therefor in and for said territory; that the plaintiff should pay for such motor trucks, and parts thereof and therefor, plaintiff in turn making collections thereof from the purchasers in such territory; that the defendant should pay to the plaintiff, and plaintiff should receive from defendant, as its com-

pensation, twenty and ten per cent to wit, twenty-eight per cent) from the list prices, as catalogued by defendant, on such motor trucks, and thirty per cent on all parts thereof and therefor (not including, however, extra tires) sold to, in, or for said territory.

12 XVII. It was further therein mutually agreed, by and between plaintiff and defendant, that the aforesaid agreement should be in force and effect up to and including July 31, 1914, upon condition, however, that in any territory covered thereby in which the plaintiff should have established an active agency, from which orders for motor trucks were received and accepted prior to July 31, 1914, said agreement should continue in full force and effect for one year thereafter, to wit, until July 31, 1915.

XVIII. That the plaintiff thereupon entered upon the performance of said agreement, and duly performed all the terms, conditions and provisions thereof by it to be performed.

XIX. That thereafter and prior to July 31, 1914, an agreement was made between plaintiff and defendant, wherein and whereby it was agreed that the aforesaid agreement, marked "Exhibit B," should be extended to and including July 31, 1915.

13 XXI. That thereafter, and on November 16, 1914, a further agreement in writing was made by and between plaintiff and defendant, copy whereof is hereto annexed, marked "Exhibit C" and hereby made a part hereof; that therein and thereby it was agreed between them that the aforesaid agreement should be amended as therein set forth, to wit, that the defendant should sell and deliver to the plaintiff, after orders therefor were received and until July 31, 1915, f. o. b. Kenosha, Wisconsin, motor trucks for the English, French, or Russian Government, on the following terms:

Quad trucks at fifteen per cent. and ten per cent. from list (to wit, twenty-three and one-half per cent. from list), and chain driven trucks at twenty-five per cent. and ten per cent. from list (to wit, thirty-two and one-half per cent. from list).

That the defendant should, until July 31, 1915, quote to the plaintiff as low a price on said trucks as it made to any dealer anywheres; that the defendant should have the right to accept orders for trucks from, and to ship the same to, any government, person, or corporation, from Kenosha, Wisconsin, or elsewhere, without in any manner becoming liable to the other parties thereto.

XXII. That thereafter, and on or about December 11, 1914, a further agreement was made by and between plaintiff and
14 defendant, wherein and whereby it was mutually agreed between them that the aforesaid agreements and each of them should be further amended so that the Russell Motor Car Company and the plaintiff should, until further agreed, have the sole right to quote prices on and make sales and deliveries of motor trucks manufactured, sold, or dealt in by the defendant, to the British Government.

XXIII. That on February 3, 1915, the said sole right to quote prices on and make sales and deliveries to the British Government of motor trucks manufactured, sold, or dealt in by the defendant, was cancelled by the defendant.

XXIV. That a further agreement was made by and between plaintiff and defendant, wherein and whereby it was mutually agreed between them that the plaintiff should have the sole right to sell motor trucks and parts thereof and therefor, manufactured, sold, or dealt in by the defendant, in European Russia; that all inquiries for such motor trucks and parts thereof and therefor, received by defendant from, in or for such European Russia, should be referred to the plaintiff; that such motor trucks and parts thereof and therefor should be sold at list prices; that the defendant should pay to plaintiff, and plaintiff should receive from defendant, as its compensation, twenty and ten per cent. (to wit, twenty-eight per cent) from the list prices as catalogued by defendant on such motor trucks, and thirty per cent. on all parts thereof and therefor (not including, however, extra tires) sold in, to, or for said territory. That said agreement should, in respect of European Russia, commence on October 1, 1912, and continue until September 30, 1917.

XXV. That the plaintiff has duly performed all the terms, conditions and provisions of each and all of said agreements by it to be performed.

XXVI. That thereafter, and in or about December, 1914, plaintiff obtained an order from the English Government for twenty of said Quad trucks, manufactured, sold, or dealt in by defendant, which said order was duly accepted by the defendant, and in all respects completed and performed. That said order from the English Government was the first order which had been obtained from said English Government for said Quad trucks. That said order was obtained solely and by reason of the efforts and services of the plaintiff.

XXVII. Upon information and belief, that the defendant, in violation of the aforesaid agreements, between November 16, 1914 and July 31, 1915, directly and actively solicited, sought, obtained and accepted orders from the English Government for motor trucks manufactured, sold, or dealt in by the defendant. That said orders were so solicited, sought, obtained and accepted by the defendant from the English Government at and in England. That a portion of said orders from said English Government was so solicited, sought, obtained and accepted in the period between December 11, 1914 and February 3, 1915.

16 XXVIII. That thereafter, the defendant, in violation of the aforesaid agreements, manufactured, sold and delivered, at list prices, to said English Government, at and in England, in pursuance of said orders so solicited, sought, obtained and accepted, a large number of defendant's said motor trucks, and parts thereof

and therefor, and wholly failed to refer the inquiries therefor to plaintiff, or to permit plaintiff to make such sales and deliveries.

XXIX. Upon information and belief, that the defendant, in violation of the aforesaid agreements, between November 16, 1914 and July 31, 1915, directly and actively solicited, sought, obtained and accepted orders from the French Government for motor trucks manufactured, sold, or dealt in by defendant. That said orders were so solicited, sought, obtained and accepted by the defendant from the French Government at and in France.

XXX. That thereafter, the defendant, in violation of the aforesaid agreements, manufactured, sold and delivered at list prices, to said French Government, at and in France, in pursuance of said orders so solicited, sought, obtained and accepted, a large number of defendant's said motor trucks, and parts thereof and therefor, and wholly failed to refer the inquiries thereof to plaintiff, or to permit plaintiff to make such sales and deliveries.

XXXI. Upon information and belief, that the defendant, in violation of the aforesaid agreements, between November 16, 1914
17 and July 31, 1915, directly and actively solicited, sought, obtained and accepted orders from the Russian Government for motor trucks, manufactured, sold, or dealt in by defendant. That said orders were so solicited, sought, obtained and accepted by the defendant from the Russian Government, at and in European Russia.

XXXII. That thereafter, the defendant, in violation of the aforesaid agreements, manufactured, sold and delivered, at list prices, to said Russian Government, at and in European Russia, in pursuance of said orders so solicited, sought, obtained and accepted, a large number of defendant's said motor trucks, and parts thereof and therefor, and wholly failed to refer the inquiries therefor to plaintiff, or to permit plaintiff to make such sales and deliveries.

XXXIII. Upon information and belief, that between November 16, 1914 and July 31, 1915, the plaintiff solicited and sought, and was about to obtain, orders from the English and French Governments for defendant's said motor trucks, and parts thereof and therefor. That at or about the time that orders therefor were about to be given by said English and French Governments to plaintiff, the defendant in violation of the aforesaid agreements, obtained and accepted the said orders which plaintiff was endeavoring to procure for said motor trucks, and parts thereof and therefor, and thereafter made deliveries thereof to said English and French Governments, and received payment therefor. That the defendant wholly failed to
18 refer the said inquiries therefor to plaintiff, or to permit plaintiff to make such sales and deliveries, and has failed, neglected and refused to pay to plaintiff the discount, commission or profit to which plaintiff is entitled thereon.

XXXIV. Upon information and belief, that the value of said motor trucks, and parts thereof and therefor, so manufactured, sold

and delivered by defendant in the period from November 16, 1914 to July 31, 1915, in violation of the aforesaid agreements, is at least the sum of Four million dollars ($4,000,000.).

XXXV. Upon information and belief, that the discount, commission or profit of the plaintiff thereon, under and pursuant to the aforesaid agreements, is at least the sum of Six hundred thousand dollars ($600,000.). That defendant has failed, neglected and refused to pay to plaintiff the discount, commission or profit to which plaintiff is entitled thereon, under and pursuant to the aforesaid agreements.

XXXVI. That by reason thereof, there is due, owing and unpaid from defendant to plaintiff the sum of Six hundred thousand dollars ($600,000.), with interest thereon from July 31, 1915, no part of which has been paid, although heretofore duly demanded.

Wherefore plaintiff demands judgment against the defendant for the sum of Eight hundred and eighty thousand dollars ($880,000.), with interest from July 31, 1915, besides the costs and dis-
19 bursements of this action.

HAYS, HERSHFIELD & WOLF,
Attorneys for Plaintiff.

Office and Post Office Address, No. 115 Broadway, Borough of Manhattan, New York City.

20 EXHIBIT A.

This agreement made and entered into this 23rd day of January, A. D. 1914, by and between The Thomas B. Jeffery Company, a corporation of the State of Wisconsin, hereinafter named the "Manufacturer," and Chipman Limited, a corporation of the State of New York, hereinafter named the "Distributor,"

Witnesseth, that for a good and sufficient consideration passing from each of the parties to the other, the receipt whereof is hereby duly acknowledged, the parties hereto do mutually convenant and agree as follows, to wit:

1. Territory.

The Manufacturer agrees that the Distributor, until the termination of this contract, shall have the sole right to sell motor cars manufactured by the Manufacturer in the following territory, to wit: Europe, including England, Ireland, Scotland and Wales; Australia and New Zealand; Argentine Republic, Chile, Peru, Uruguay and Brazil in South America; Philippine Islands; Hongkong; Singapore and Java; Strait Settlements; India; Burma; Siam and China; Mexico; West Indies, cincluding Cuba and Porto Rico; the Windward and Leeward Islands, and the Mediterranean countries of Africa; and agrees to sell and deliver to said Distributor at Kenosha, Wisconsin, such cars and parts therefor for sale in any of said territory for the period fixed hereby, and to refer to the Distributor all inquiries for

motor cars and parts of its manufacture received from the territory of such Distributor during said period.

2. Deliveries.

The Manufacturer agrees to exercise diligence in filling orders of the Distributor for motor cars and parts therefor, but does not assume any responsibility to the Distributor because of unavoidable delays occasioned by strikes, walkouts, fires, inability to secure raw materials, or any other causes over which the Manufacturer lacks
21 control, and for any delays thus occasioned the Distributor agrees not to make any claim against the Manufacturer for damages or otherwise.

The Manufacturer reserves the right to fill the orders of the Distributor for motor cars and parts from any of its depots at New York City. In such case the cars and parts delivered to the Distributor shall be settled for by the payment by the Distributor of the net purchase price therefor at the time of the delivery of the same, together with all transportation charges on all property delivered from Kenosha, Wisconsin, to New York City, without, however, including any warehouse charges thereon.

3. Payment.

The Distributor agrees to pay for motor cars purchased hereunder at Kenosha, Wisconsin, including exchange, within ten days after the steamer's bill of lading is issued therefor; it being understood that in any event payment shall be made within thirty days after any car is received by the Distributor at New York City, and that all parts ordered by the Distributor during each month shall be paid for not later than the tenth (10th) day of the next succeeding month at Kenosha, Wisconsin.

4. Prices and Discounts.

The Manufacturer agrees to allow to the Distributor twenty and ten per cent (20 and 10%) from the list prices as catalogued on all Jeffery motor cars, and thirty (30) per cent on all parts ordered (but not including extra tires); and a discount of ten per cent (10%) from the following prices of Rambler motor cars, to wit:

Rambler Cross Country	$1,250.00
Rambler Seven Passenger Cross Country	1,383.34
Rambler Roadster	1,210.00
Rambler Gotham	2,000.00

5. Responsibility of Distributor.

All orders for motor cars to be delivered at any point within the territory above described, shall be given and made by the Distributor

and in its name, and the Manufacturer shall not be required
22 to deal with any sub-dealer selected by the Distributor in said territory in any manner whatsoever, and shall not be liable for any services rendered or expenses incurred by the Distributor or any of the Distributor's representatives or sub-dealers in said territory in any manner whatsoever.

6. Samples.

The Distributor shall during the life of this agreement keep in stock at its place of business at New York City at least two samples of current models of the cars manufactured by the Manufacturer, to be used either for exhibition or demonstrating purposes, and shall maintain the same in good order and repair, and shall exhibit and demonstrate same to prospective dealers or customers from the territory hereinbefore described, and to none others.

Provided however, that if the Distributor arranges with the Jobber of the Manufacturer located at New York City for the demonstration of the cars made by the Manufacturer so that prospective dealers or customers from the territory covered by this agreement shall have an opportunity to examine and to witness the demonstration of said cars, then the Distributor shall be relieved from keeping in stock at its place of business the two samples above referred to.

7. Representation by Distributor.

The Distributor agrees to give to said motor cars at least equal representation with any other motor cars sold by the Distributor in said territory; to faithfully represent and judiciously advertise them; to make all reasonable effort to promote and increase their sale; not to offer for sale or sell any of such cars in territory other than herein specified, and to promptly refer to the Manufacturer all inquiries for cars received from other territory.

The Distributor shall diligently represent said motor cars
23 in all of the territory herein described, either personally or through sub-dealers selected by it.

If the Distributor abandons this contract and refuses to perform the same at any time, the Manufacturer shall have the right to take over the control of the territory herein described, and to provide for other representation therefor without in any manner becoming obligated to the Distributor thereby.

8. Report on Sub-Dealers.

The Distributor shall make report to the Manufacturer of the names and post office addresses of all sub-dealers selected by the Distributor in the territory referred to, with the territory allotted to each, and with the number of cars contracted for by each at the end of each sixty (60) days hereafter.

9. Claims.

Motor cars or parts alleged to be defective by the Distributor must be returned, transportation charges prepaid, to the Manufacturer for examination and inspection before any allowance will be made, and all claims for errors and allowances with respect to shipments of parts must be made within ten (10) days after receipt of such parts. No claims shall be made upon the Manufacturer for defects in any car or its equipment other than as provided in the Manufacturer's warranty.

10. Responsibility of the Manufacturer for Loss or Damage.

The responsibility of the Manufacturer for any and all loss or damage to cars or parts shall cease upon the delivery thereof by the Manufacturer to the railroad, express company or other carrier, or to the Distributor's representative at Kenosha, Wisconsin.

11. Dealer not Agent.

The Distributor is not in any manner authorized or empowered hereunder to conduct business in the name of the Manufacturer, and is not authorized to enter into any contract in the name of the Manufacturer, and shall not make any promises or representations
24 in the Manufacturer's name or otherwise relative to its goods other than as are contained in its latest catalogue.

12. Trade Names.

If in the transaction of business hereunder the Distributor or any sub-dealer or representative thereof employs the name "Rambler" or "Jeffery" or any combination of said name words on letterheads, or in advertising matter or otherwise, it and they shall immediately upon the termination of this contract entirely discontinue the use of said name words and of any combination of the same in connection with any business of any character; and if in connection with the sale of the motor cars of the Manufacturer in any of said territory the Distributor or any of its sub-dealers, agents or representatives, shall register or cause to be registered or entered on public record said name words or any combination thereof, such Distributor shall at the termination of this contract or of any extension or renewal thereof cause any rights secured by it or its representatives in and to said name words *of* any combination thereof, to be assigned to the Manufacturer, and shall thereafter refrain from claiming any property right in and to said name word or any combination thereof, for any purpose whatsover.

13. Report on Purchasers.

The Distributor shall on the first days of April, July and October hereafter and while this contract is in force, report in writing to the Manufacturer the names and addresses of persons, firms and corporations which during the preceding quarter have purchased through the Distributor or any of its sub-dealers the motor cars of the Manufacturer so far as it is able to do so, with the model and serial number of each car so sold and delivered.

14. Contract non-Assignable.

This agreement is non-assignable by the Distributor, and shall be in force and effect up to and including the thirty-first (31st) day of July, 1914.

Upon condition, however, that in any country covered hereby in which the Distributor shall have established an active agency from which orders for motor cars have been received and accepted prior to July 31st, 1914, this contract shall continue in full force and effect for one year thereafter, or until July 31st, 1915, the Distributor agreeing in such event, in case the Manufacturer makes prompt delivery of cars ordered, to take and pay for at least three hundred (300) of the motor cars of the Manufacturer prior to said July 31st, 1915. And upon further condition that if the Manufacturer shall prior to the date of termination of this contract or of any extension thereof, accept any order or contract negotiated by the Distributor for the sale of motor cars and under which cars are to be delivered in any of the territory above described after the termination of this contract, the manufacturer agrees and binds itself to deliver or cause to be delivered to the Distributor such cars at the times specified in the accepted orders of contracts therefor as near as may be;—such orders taken or negotiated by the Distributor for future delivery not to be binding upon the Manufacturer, however, until accepted by it in writing.

15. Effect of this Contract.

The execution and delivery of this contract by each of the parties hereto shall operate to cancel all earlier contracts of every name and nature between them, covering the sale of motor cars and parts in any of the territory above described, but shall not release the Manufacturer from the duty to deliver cars on any orders or contracts heretofore secured by the Distributor, nor shall it release or in any wise affect the duty of the Distributor to fully perform any obligations resting upon it under any prior contract.

26 In witness whereof the parties hereto have caused this instrument to be executed in duplicate this 23rd day of January A. D. 1914.

THE THOMAS B. JEFFERY COMPANY,
(*M'f'g'r*),
By E. S. JORDAN.
CHIPMAN, LIMITED,
(*Distributor*)

By Then Attorney H. S. CHIPMAN.

Signed and Delivered in the Presence of
L. H. BILL.

27 EXHIBIT B.

This agreement made and entered into this 24th day of January, A. D. 1914, by and between The Thomas B. Jeffery Company, a corporation of the State of Wisconsin hereinafter named the "Manufacturer," and Chipman Limited, a corporation of the State of New York, hereinafter named the "Distributor,"

Witnesseth, that for a good and sufficient consideration passing from each of the parties to the other, the receipt whereof is hereby duly acknowledged, the parties hereto do mutually convenant and agree as follows, to wit:

1. Territory.

The Manufacturer agrees that the Distributor, until the termination of this contract, shall have the sole right to sell motor cars manufactured by the Manufacturer in the following territory, to wit: Europe, including England, Ireland, Scotland and Wales; Australia and New Zealand; Argentine Republic, Chile, Peru, Uruguay and Brazil in South America; Philippine Islands; Hongkong; Singapore and Java; Strait Settlements; India; Burma; Siam and China; Mexico; West Indies, including Cuba and Porto Rico; the Windward and Leeward Islands, and the Mediterranean countries of Africa; and agrees to sell and deliver to said Distributor at Kenosha, Wisconsin suc htrucks and parts therefor for sale in any of said territory for the period fixed hereby, and to refer to the Distributor all inquiries for motor trucks and parts of its manufacture received from the territory of such Distibutor during said period.

2. Deliveries.

The Manufacturer agrees to exercise diligence in filling orders of the Distributor for motor trucks and parts therefor, but does
28 not as-ume any responsibility to the Distributor because of unavoidable delays occasioned by strikes, walk-outs, fires, ina-

bility to secure raw materials, or any other causes over which the Manufacturer lacks control, and for any delays thus occasioned the Distributor agrees not to make any claim against the Manufacturer for damages or otherwise.

The Manufacturer reserves the right to fill the orders of the Distributor for motor trucks and parts from any of its depots at New York City. In such case the trucks and parts delivered to the Distributor shall be settled for by the payment by the Distributor of the net purchase price therefor at the time of the delivery of the same, together with all transportation charges on all property delivered from Kenosha, Wisconsin, to New York City, without, however, including any warehouse charges thereon.

3. Payment.

The Distributor agrees to pay for motor trucks purchased hereunder at Kenosha, Wisconsin, including exchange, within ten days after the steamer's bill of lading is issued therefor; it being understood that in any event payment shall be made within thirty days after any truck is received by the Distributor at New York City, and that all parts ordered by the Distributor during each month shall be paid for not later than the tenth (10th) day of the next succeeding month at Kenosha, Wisconsin.

4. Prices and Discounts.

The Manufacturer agrees to allow to the Distributor twenty and ten per cent (20 and 10%) from the list prices as catalogued on all Jeffery motor trucks, and thirty (30) per cent on all parts ordered (but not including extra tires).

29 5. Responsibility of Distributor.

All orders for motor trucks to be delivered at any point within the territory above described, shall be given and made by the Distributor and in its name, and the Manufacturer shall not be required to deal with any sub-dealer selected by the Distributor in said territory in any manner whatsoever.

6. Representation by Distributor.

The Distributor agrees to give to said motor trucks at least equal representation with any other motor trucks sold by the Distributor in said territory; to faithfully represent and judiciously advertise them: to make all reasonable effort to promote and increase their sale or sell any of such trucks in territory other than herein specified, and to promptly refer to the Manufacturer all inquiries for trucks received from other territory.

The Distributor shall diligently represent said motor trucks in all of the territory herein described, either personally or through subdealers selected by it. If the Distributor abandons this contract and

refuses to perform the same at any time, the Manufacturer shall have the right to take over the control of the territory herein described and to provide for other representation therefor without in any manner becoming obligated to the Distributor thereby.

7. Report on Sub-dealers.

The Distributor shall make report to the Manufacturer of the names and post office addresses of all sub-dealers selected by the Distributor in the territory referred to, with the territory allotted to each and with the number of trucks contracted for by each at the end of each Sixty (60) days hereafter.

8. Claims.

Motor trucks or parts alleged to be defective by the Distributor must be returned, transportation charges prepaid, to the Manufacturer for examination and inspection before any allowance will be made, and all claims for errors and allowances with respect to shipments of parts must be made within ten (10) days after receipt of such parts. No claims shall be made upon the Manufacturer for defects in any truck or its equipment other than as provided in the Manufacturer's warranty.

9. Responsibility of the Manufacturer for Loss or Damage.

The responsibility of the Manufacturer for any and all loss or damage to trucks or parts shall cease upon the delivery thereof by the Manufacturer to the railroad, express company or other carrier, or to the Distributor's representative at Kenosha, Wisconsin.

10. Dealer not Agent.

The Distributor is not in any manner authorized or empowered hereunder to conduct business in the name of the Manufacturer, and is not authorized to enter into any contract in the name of the Manufacturer, and shall not make any promises or representations in the Manufacturer's name or otherwise relative to its goods other than as are contained in its latest catalogue.

11. Trade Names.

If in the transaction of business hereunder the Distributor or any sub-dealer or representative thereof employs the name "Rambler" or "Jeffery" or any combination of said name words on letterheads, or in advertising matter or otherwise, it and they shall immediately upon the termination of this contract entirely discontinue the use of said name words and of any combination of the same in connection with any business of any character; and if in connection with the sale of the motor trucks of the Manufacturer in any of said territory the Distributor or any of its sub-dealers, agents or representatives, shall

register or cause to be registered or entered on public record said name words *of* any combination thereof, such Distributor shall at the termination of this contract or of any extension or renewal
31 thereof cause any rights secured by it or its representatives in and to said name words or any combination thereof, to be assigned to the Manufacturer, and shall thereafter refrain from claiming any property right in and to said name word or any combination thereof, for any purpose whatsoever.

12. Report on Purchasers.

The Distributor shall on the first days of April, July and October hereafter and while this contract is in force, report in writing to the Manufacturer the names and addresses of persons, firms and corporations which during the preceding quarter have purchased through the Distributor or any of its sub-dealers the motor trucks of the Manufacturer so far as it is able to do so, with the model and serial number of each truck so sold and delivered.

13. Contract Non-Assignable.

This agreement is non-assignable by the Distributor, and shall be in force and effect up to and including the thirty-first (31st) day of July, 1914.

Upon condition, however, that in any country covered hereby in which the Distributor shall have established an active agency from which orders for motor trucks have been received and accepted prior to July 31st, 1914, this contract shall continue in full force and effect for one year thereafter, or until July 31st, 1915. And upon further condition that if the Manufacturer shall prior to the date of termination of this contract or of any extension thereof, accept any order or contract negotiated by the Distributor for the sale of motor trucks and under which trucks are to be delivered in any of the territory above described after the termination of this contract, the Manufacturer agrees and binds itself to deliver or cause to be delivered to the Distributor such trucks at the times specified in the accepted orders or contracts therefor as near as may be; —
32 such orders taken or negotiated by the Distributor for future delivery not to be binding upon the Manufacturer, however, until accepted by it in writing.

14. Effect of This Contract.

The execution and delivery of this contract by each of the parties hereto shall operate to cancel all earlier contracts of every name and nature between them, covering the sale of motor trucks and parts in any of the territory above described, but shall not release the Manufacturer from the duty to deliver trucks on any orders or contracts heretofore secured by the Distributor, nor shall it release or

in any wise affect the duty of the Distributor to fully perform any obligations resting upon it under any prior contract.

In witness whereof the parties hereto have caused this instrument to be executed in duplicate this 24th day of January A. D. 1914.

THE THOMAS B. JEFFERY COMPANY,
(*M'f'gr*),
By E. S. JORDAN.
CHIPMAN, LIMITED, (*Distributor*),
By Then Attorney, H. S. CHIPMAN.

Signed and Delivered in the Presence of
HOWARD H. CHIPMAN.

33 EXHIBIT C.

Kenosha, Wisconsin, November sixteenth, 1914.

To the end that the understanding entered into between The Thomas B. Jeffery Company of Kenosha, Wisconsin, of the first part; The Russell Motor Car Company of Toronto, Canada, of the second part; and Chipman Limited of New York City of the third part, may be clearly defined, it is for a valuable consideration passing between the parties hereto, the receipt of which is acknowledged by each, agreed as follows: the first party will sell and deliver to the second and third party, either jointly or severally, and as soon as its manufacturing conditions will permit, after the orders therefor are actually received, and until July thirty first nineteen hundred fifteen, f. o. b. cars Kenosha, Wisconsin, trucks ordered for delivery at Kenosha, Wisconsin, for either English, French, or Russian governments, on the following terms, viz: Quad trucks at fifteen per cent (15%) and ten per cent (10%) from list, and chain driven trucks at twenty five per cent (25%) and ten per cent (10%) from list; payments at New York, sight draft with bill of lading attached.

It is understood that the price quoted on chain driven trucks is special and is subject to change with this condition, however; that the first party will, during the life of this agreement, quote to the second and third parties as low a price on chain driven trucks as it makes to any dealer anywhere.

All arrangements and agreements between the second and third parties are to be worked out between themselves, without in any manner involving the first party.

The first party reserves the right to accept orders for trucks from and to ship the same to either the second party or the third party, or to any government, person, or corporation, from Kenosha, Wisconsin, or elsewhere, without in any manner becoming liable to the other parties hereto.

This agreement is to cover all pending and prior arrangements between the parties hereto relating to the sale of trucks manufactured by the first party, excepting only that it shall not affect the

existing contract between the first party and the second party relating to business in Canada.

THE THOMAS B. JEFFERY COMPANY,
By L. H. RILL,
Ass't Gen. M'g'r.
THE RUSSELL MOTOR CAR COMPANY,
By C. R. BURT,
Factory M'g'r,
CHIPMAN, LIMITED,
By H. S. CHIPMAN,
Att'y.

34 CITY AND COUNTY OF NEW YORK, *ss:*

—— —— being duly sworn, deposes and says:

That he is the — of Chipman, Limited, the plaintiff herein; that he has read the foregoing complaint and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, he believes it to be true.

That the reason this verification is not made by the plaintiff is, that the plaintiff is a corporation, and the grounds of deponent's belief as to all matters in said complaint not stated upon his knowledge are investigations which deponent has caused to be made concerning the subject matter of this action, and information acquired by deponent in the course of his duties as such officer of the plaintiff-corporation herein.

Sworn to before me this — day of May, 1919.

—— ——.

35 [Endorsed:] N. Y. Supreme Court, New York County. Chipman, Limited, plaintiff, against The Thomas B. Jeffery Company, defendant. (Copy.) Complaint. Hays, Hershfield & Wolf, attorneys for plaintiff, No. 115 Broadway, Borough of Manhattan, New York City. Filed July 9, 1919.

36 Supreme Court of the State of New York, County of New York.

CHIPMAN, LIMITED, Plaintiff,

against

THE THOMAS B. JEFFERY COMPANY, Defendant.

SIRS:

Please take notice that on the 10th day of June, 1919, at 10:30 o'clock in the forenoon of said day, we shall file in the Clerk's Office of the Supreme Court, held in and for the County of New York, a petition, of which a copy is hereto annexed, for the removal of the above entitled cause to the District Court of the United States

for the Southern District of New York. That we shall then and there file a good and sufficient bond, as by the Statutes required, a copy of which bond is hereto annexed; and at the same time, or as soon thereafter as counsel can be heard, we shall request the removal of said cause at Special Term, Part II of this Court, and that we shall then and there request this court to take no further proceedings in this action.

Yours, &c.,

PHILIP B. ADAMS,
Attorney for Defendant, Appearing Specially Herein for the Purposes of This Motion.

Office & P. O. Address, 21 Park Row, Borough of Manhattan, City of New York.

THOS. M. KEARNEY,
Of Counsel for Defendant.

To: Hays, Hershfield & Wolf, Esqs., Attorneys for Plaintiff.

37 Supreme Court of the State of New York, County of New York.

CHIPMAN, LIMITED, Plaintiff,

against

THE THOMAS B. JEFFERY COMPANY, Defendant.

To the Supreme Court of the State of New York, New York County:

The defendant above-named and the petitioner herein, appearing herein specially, for the sole and single purpose of removing this cause to the United States District Court for the Southern District of New York, and for no other purpose whatever, respectfully shows to this Court and alleges:

I. That the above entitled suit is of a civil nature and is wholly between citizens of different states.

II. That the nature of the cause of action set forth in the complaint of the plaintiff herein, is to recover a judgment against the defendant for the sum of Eight hundred and eighty thousand ($880,000) dollars, as and for commissions earned under, and damages for the breach of certain contracts entered into between the parties to this litigation, covering the sale of motor cars and motor trucks.

III. That the amount in controversy in this suit exceeds the sum of Three thousand ($3,000) dollars, exclusive of interest and costs.

38 IV. That at the time of the commencement of this action the plaintiff was, and still is a domestic corporation, organized and created under and by virtue of the laws of the State of New York,

and is a citizen of that State, and is not a citizen of the State of Wisconsin.

V. That at the time of the commencement of this suit, the defendant, The Thomas B. Jeffery Company, was, and still is a foreign corporation, organized and created under the laws of the State of Wisconsin, and was and still is a citizen of that State, and is not a citizen of the State of New York.

VI. That there are no other parties to this suit than Chipman, Limited, the plaintiff herein, and The Thomas B. Jeffery Company, the defendant herein.

VII. That this action was commenced in the Supreme Court of the State of New York for New York County, by the alleged service of a summons on the 17th day of March, 1919.

VIII. That thereafter, and on the 23rd day of May, 1919, the plaintiff served its complaint in this action, and the time of the defendant to answer or plead to the declaration or complaint of the plaintiff herein will not expire until the 12th day of June, 1919.

IX. The defendant offers herewith its bond in the sum of Five Hundred ($500.00) Dollars, executed by the American Surety Company of New York, a good and sufficient surety for its entering in the District Court for the Southern District of New York, within thirty days from the date of filing this petition, a certified copy of the record in said suit, and for paying all costs that may be awarded in said District Court if said District Court shall hold that said suit was wrongfully or improperly removed thereto.

39 X. That prior to the filing of this petition and the aforesaid bond, written notice thereof was given to the plaintiff.

Wherefore, your petitioner prays that this suit may be removed into the District Court of the United States, for the Southern District of New York, and that the bond filed with this petition may be approved by this Court, and said cause may be removed to the District Court of the United States, for the Southern District of New York, and that the same shall proceed in said Court in the same manner as if it had been commenced in the said District Court of the United States, and that no further proceedings may be had in this cause in the State court.

Dated, New York, June 3rd, 1919.

THE THOMAS B. JEFFERY COMPANY,
By C. W. NASH,
President.

PHILIP B. ADAMS,
Attorney for Petitioner.

Office & P. O. Address, 21 Park Row, Borough of Manhattan, City of New York.

THOMAS M. KEARNEY,
Of Counsel for Defendant.

40 Supreme Court of the State of New York, County of New York.

CHIPMAN, LIMITED, Plaintiff,

against

THE THOMAS B. JEFFERY COMPANY, Defendant.

STATE OF WISCONSIN,
County of Kenosha, ss:

Charles W. Nash, being duly sworn, says:

That he is the President of the defendant, The Thomas B. Jeffery Company, a corporation organized and created under the laws of the State of Wisconsin.

That he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated to be alleged upon information and belief, and as to those matters, he believes it to be true.

That the reason this verification is made by this deponent is that the defendant is a corporation and that this deponent is one of the officers thereof.

CHARLES W. NASH.

Sworn to before me this 3rd day of June, 1919.

HORACE J. MELLUM,
Notary Public.

[SEAL.]

My Commission expires Aug. 27, 1922.

(Certificate of Notary.)

41 Authority of Signers for Surety.

Extract from the Record Book of the Board of Trustees of the American Surety Company of New York.

The first meeting of the Board of Trustees of the American Surety Company of New York, after the annual Stockholders' meeting, was held at the office of the Company, No. 100 Broadway, New York City, on Tuesday, January 21, 1919, at twelve o'clock noon.

"The Secretary read the report of the Nominating Committee as follows:

"To the Board of Trustees, American Surety Company of New York.

"GENTLEMEN:

"The Committee appointed by the Executive Committee of this Company, at their meeting held Tuesday, December 3, 1918, for

the purpose of nominating * * * Officers of the Company, * * * for the ensuing year and until their successors are elected, beg leave to report as follows:

"We nominate for

Place.	Resident vice-presidents.	Resident assistant secretaries.
New York, N. Y.	Marshall L. Brower.	Marshall L. Brower.
	A. E. Cotterell.	A. E. Cotterell.
	William M. Tomlins, Jr.	Charles S. Waterbury.
	Lester S. Moore.	Daniel Stewart.
	W. H. E. Reinecke.	E. D. Sadler.
	E. D. Sadler.	W. H. E. Reinecke.
	C. S. Waterbury.	E. J. Sabater.
	Louis Papen.	Louis Papen.
	Samuel B. Brewster.	Robert L. Neptune.
	C. E. St. John.	M. E. McGuire.
		Geo. W. Acritelli.
		Charles A. Stumpf.
		Lester S. Moore.
		Clark Reynolds.
		F. G. Merrill.
		Samuel B. Brewster.
		C. E. St. John.
		Willis E. McCurdy.
		William J. Spalkhaver.
		Wm. C. Sievers.
		R. P. Luckett.
		Peter H. May.

* * * * * * *

"Whereupon, it was

"Resolved, That the Secretary be authorized to cast one ballot on behalf of the Trustees present, for the members of the Executive Committee, Finance Committee, Committee on Accounts, Committee on Capital Box, Officers and Counsel, as recommended by the Nominating Committee for the ensuing year and until their successors are elected; which was done, and thereupon the aforementioned persons were declared to have been unanimously elected to their respective offices for the ensuing year and until their successors are elected.

"The following resolution was adopted:

"Resolved, That the Resident Vice Presidents be and they hereby are, and each of them is hereby, authorized and empowered to execute and to deliver and to attach the seal of the Company to any and all obligations for or on behalf of the Company, such obligations, however, to be attested in every instance by a Resident Assistant Secretary."

* * * * * * *

STATE OF NEW YORK,
County of New York, ss:

I, H. E. Ising, Assistant Secretary of the American Surety Company of New York, do hereby certify that I have compared the foregoing extracts and transcripts, from the Record Book of the Board of Trustees of the American Surety Company of New York, with the original record of said Board, and that the same are correct extracts and transcripts therefrom as they appear of record and are set forth and contained in said Record Book; and I further certify that I have compared the foregoing resolutions with the originals thereof, as recorded in the Minute Book of said Company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original resolutions; and that the said resolutions have not been revoked or rescinded.

Given under my hand and the seal of the Company, at the City of New York, this 21st day of January, 1919.

(Signed) H. E. ISING,
Assistant Secretary.

42 STATE OF NEW YORK,
County of New York, City of New York, ss:

On this 29th day of May, 1919, before me personally appeared Marshall L. Brower of the American Surety Company of New York, with whom I am personally acquainted, who being by me duly sworn, said: That he resided in the City of New York, N. Y.; that he is the *Resident Vice President of the American Surety Company of New York, the Corporation described in and which executed the within instrument; that he knew the corporate seal of said Corporation; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed by order of the Board of Trustees of said Corporation; that he signed said instrument as *Resident Vice President of said Company by like authority, and that the liabilities of the American Surety Company of New York do not exceed the assets as ascertained in the manner provided in Section 3, Chapter 720, of the New York Session Laws of 1893. And the said Marshall L. Brower further said that he was acquainted with F. G. Merrill and knew him to be the †Resident Assistant Secretary of said Corporation; and that the signature of said F. G. Merrill was thereto subscribed by like order of the said Board of Trustees and in the presence of him the said *Resident Vice President.

[L. S.] H. M. HESS,
Notary Public, — County.

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*Insert here "Resident Vice President" or "Attorney-in-Fact."
†Insert here "Resident Assistant Secretary" or "Countersigner."

Notary Public, Bronx County No. 57. Bronx Co. Register's No. 255. Certificate filed in N. Y. County No. 392. New York Co. Register's No. 10306. Certificate filed in Kings Co. No. 40. Kings County Register's No. 242. Certificates filed in Queens, Richmond and Westchester Counties.

Commission expires March 30, 1920.

____ ____,
Commissioner of Deeds.

[Endorsed:] Supreme Court, New York County. Chipman Limited, plaintiff, against The Thomas B. Jeffery Company, defendant. Bond on removal. Attorney for defendant, Philip B. Adams, 21 Park Row, N. Y. C.

STATE OF WISCONSIN,
County of Kenosha, ss:

On this 3rd day of June, 1919, before me personally appeared the within named C. W. Nash, President, The Thomas B. Jeffery Company, to me known, and known to me to be the individual described in and who executed the within bond, and acknowledged that he executed the same.

[SEAL.] HORACE J. MELLUM,
Notary Public.

My Commission expires Aug. 27, 1920.

(Certificate of Notary.)

43 American Surety Company of New York.

Capital $5,000,000.

Company's Office Building, 100 Broadway, New York.

Know all men by these presents, that we, The Thomas B. Jeffery Company as principal, and American Surety Company of New York, of 100 Broadway, New York, as Surety are held and firmly bound unto Chipman, Limited, in the sum of five hundred ($500.00) dollars to be paid to the said Chipman, Limited, executors, administrators or assigns; to which payment well and truly to be made and done, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Sealed with our seals the 29th day of May, A. D. 1919.

Whereas, the above bounden The Thomas B. Jeffery Company has petitioned the Supreme Court of New York County, State of New York, for the removal of a cause therein pending wherein Chipman Limited is the plaintiff, and The Thomas B. Jeffery Company is the defendant, to the District Court of the United States for the Southern District of New York pursuant to the provisions of the Acts of Congress in that behalf;

Now, therefore, the condition of the above obligation is such, that if the above bounden The Thomas B. Jeffery Company shall enter in such District Court, within thirty days from the date of filing said petition a certified copy of the record in such suit, copies of the process against petitioner, and of all the pleadings, depositions, testimony and other proceedings in the cause, and shall pay all costs that may be awarded by said District Court, if said Court shall hold that such suit was wrongfully or improperly removed thereto, then this obligation shall be null and void, otherwise of force.

THE THOMAS B. JEFFERY COMPANY,
By C. W. NASH. [SEAL.]
AMERICAN SURETY COMPANY OF NEW YORK, [SEAL.]
By MARSHALL L. BROWER,
Resident Vice President.

Attest:
F. G. MERRILL,
Resident Assistant Secretary.

114457A.

(When signing the above, strike out the titles that are not applicable.)

44 [Endorsed:] Supreme Court, New York County. Chipman, Limited, plaintiff, against The Thomas B. Jeffery Company, defendant. Record on removal. Philip B. Adams, attorney for defendant, appearing specially herein. Office and P. O. Address, 21 Park Row, Borough of Manhattan, New York City. Filed July 9, 1919.

45 United States District Court for the Southern District of New York.

L20-246.

CHIPMAN, LIMITED, Plaintiff,

against

THE THOMAS B. JEFFREY COMPANY, Defendant.

SIRS:

Please take notice, that upon the summons and complaint herein, and the affidavits of Thomas M. Kearney, verified the 1st day of August, 1919, Charles T. Jeffery, verified the 1st day of August, 1919, Philip B. Adams, verified the 1st day of August, 1919, George W. Greiner, verified the 20th day of June, 1919, and the affidavit of Milo M. Smith, verified the 20th day of June, 1919, the defendant will move this Court at a Stated Term for Motions, appointed to be held at the Post Office Building, in the Borough of Manhattan, City, County and State of New York, and in the Southern District

thereof, on Thursday, the 7th day of August, 1919, at the opening of Court on that day, or as soon thereafter as Counsel can be heard, for an order, vacating and setting aside the service of the summons, and setting aside the summons, and dismissing the complaint for lack of jurisdiction of the person of the defendant.

Yours, &c.,

PHILIP B. ADAMS,
Attorney for Defendant, Appearing Specially Herein.

Office & P. O, Address, 21 Park Row, Borough of Manhattan, City of New York.

THOMAS M. KEARNEY,
Of Counsel, for the Defendant.

46 To: Hays, Hershfield & Wolf, Esqs., Attorneys for Plaintiff, 115 Broadway, New York City.

47 United States District Court for the Southern District of New York.

CHIPMAN, LIMITED, Plaintiff.

against

THE THOMAS B. JEFFERY COMPANY, Defendant.

CITY AND STATE OF NEW YORK,
County of New York, ss:

Thomas M. Kearney, being first duly sworn according to law, says that he is a resident of the City of Racine, in the County of Racine, State of Wisconsin, where he has resided for more than twenty-five years last past. That he is an attorney at law, engaged in the practice of this profession, and has been such for about forty years last past,

That during the year 1916 and prior thereto, he was a director of The Thomas B. Jeffery Company, the defendant above named, and its general counsel; and that for several years prior to the month of July, 1916, he directed its legal affairs.

That on or about the first day of July, 1916, affiant, acting for and on behalf of the then stockholders of The Thomas B. Jeffery Company sold all of the stock of that Company to Charles W. Nash and others. That thereafter, and on or about the 16th day of August, 1916, the stockholders of the then Thomas B. Jeffery Com-
48 pany sold all of its property, assets and business of every name and nature to the Nash Motors Company, a corporation organized and existing under and by virtue of the Laws of Maryland. That upon the sale of its assets, property and business to the Nash Motors Company, The Thomas B. Jeffery Company

ceased doing business of all kinds and discontinued business, and that since the month of August, 1916, it has not transacted any business in the State of New York or elsewhere.

That after the month of August, 1916, the said Thomas B. Jeffery Company, by proper action, reduced its capital stock from Thirty thousand shares of the par value of One hundred ($100) dollars each, to one hundred shares of the par value of One hundred ($100) dollars each; and thereafter, its organization was retained for the purpose of enabling its officers to close up the local matters of small importance and to execute any further papers that might be required in order to complete the title of The Nash Motors Company to the property conveyed.

That affiant knows that on the 17th day of March, 1919, the date of the commencement of the above-entitled action, the said Thomas B. Jeffery Company had no property of any kind in the State of New York, and that it was not then engaged in any business in said State of any kind whatsoever.

Affiant further says that in the month of July, 1916, the directors of The Thomas B. Jeffery Company were three in number, namely, Charles T. Jefferey, Harold W. Jeffery, and this affiant, Thomas M. Kearney; that since the month of July, 1916, all of the directors and officers of The Thomas B. Jeffery Company are residents of the State of Wisconsin, and that at no time since
49 the first day of July, 1916 or prior thereto, did any of the officers of The Thomas B. Jeffery Company reside or have any place of business within the State of New York.

Affiant further says that as counsel for the said Thomas B. Jeffery Company, he assisted in the preparation of all of the contracts set forth by copies in the complaint in this action, and marked exhibits "A", "B", and "C" respectively. That said contracts were prepared, completed, executed and delivered at the City of Kenosha, in the County of Kenosha, in the State of Wisconsin, and not elsewhere, and as appears from them, were to be performed by the defendant at the said City of Kenosha, in the State of Wisconsin, and not elsewhere; and that at no time, did the defendant, as affiant is informed, and verily believes, transact any business on its part to be performed in connection with any of said contracts within the State of New York.

Affiant further says that through inadvertance, The Thomas B. Jeffery Company, the defendant above named, upon disposing of all of its property and effects to The Nash Motors Company, as hereinbefore set forth, neglected and overlooked the revocation of an appointment theretofore made of Philip B. Adams, of 21 Park Row, New York City, as its agent in the State of New York, and that it had no purpose or intention of continuing said designation after that date, but that its failure to revoke the same was by inadvertance and mistake, and not otherwise.

THOS. M. KEARNEY.

Sworn to before me and subscribed in my presence this 1st day of August, 1919.

MABEL DITTENHOEFER,
Notary Public, New York County, No. 87.

50 United States District Court for the Southern District of New York.

CHIPMAN, LIMITED, Plaintiff,

against

THE THOMAS B. JEFFERY COMPANY, Defendant.

CITY & STATE OF NEW YORK,
County of New York, ss:

Charles T. Jeffery, being first duly sworn according to law, says: that he at this time resides at the City of Chicago, County of Cook, in the State of Illinois. That during the year 1916, he resided in the City of Kenosha, County of Kenosha, State of Wisconsin.

That in the year 1916 and prior thereto, he was one of the directors and an officer, to wit, President of The Thomas B. Jeffery Company, the defendant above named. That said The Thomas B. Jeffery Company is and was a corporation organized under and by virtue of the Laws of the State of Wisconsin, and engaged in the business of the manufacture and sale of motor cars and motor trucks at the City of Kenosha, Wisconsin.

That the said Thomas B. Jeffery Company sold all of its assets and property of every name and nature on or about the 16th day of August, 1916, to The Nash Motors Company, a corporation organized under and by virtue of the Laws of the State of Maryland, and since the time of said sale, The Thomas B. Jeffery Company has
51 not been engaged in any business of any kind whatever in the State of New York or elsewhere.

That affiant has read the affidavits of Thomas M. Kearney hereto attached, and knows the contents thereof, and that the same are true to affiant's own knowledge.

CHARLES T. JEFFERY.

Sworn to before me and subscribed in my presence this 1st day of August, 1919.

MABEL DITTENHOEFER,
Notary Public, New York County, No. 87.

52 United States District Court for the Southern District of New York.

120-246.

CHIPMAN, LIMITED, Plaintiff,

against

THE THOMAS B. JEFFERY COMPANY, Defendant.

CITY & STATE OF NEW YORK,
County of New York, ss:

Philip B. Adams, being first duly sworn according to law, deposes and says that he is the attorney for the defendant in the above-entitled action, and that the defendant has appeared specially herein for the purpose of objecting to the jurisdiction of the Court.

That on or about the 6th day of July, 1914, he was designated by the defendant as the agent upon whom service of process might be made according to provisions of Section 16 of the General Corporation Law, and that in said designation, it was stated that the principal office of the defendant in the State of New York would be at 21 Park Row, in the Borough of Manhattan, City, County & State of New York. That at that time, and ever since, this deponent has been a practicing attorney of the State of New York, and that the place of business so designated by the defendant was this deponent's law office at 21 Park Row.

That he was not and is not now an officer of the Corporation, nor is he in any wise connected with any of its business trans-
53 actions, and that he has no connection with the defendant Company excepting as its attorney in various matters in the State of New York. That he does not know of the Corporation having transacted any business in the State of New York, and upon information and belief that the Corporation does not transact any business in the State of New York; and that the source of his information and ground of his belief are various statements made to him by different officers of the Corporation, and his knowledge of its affairs.

PHILIP B. ADAMS.

Sworn to before me and subscribed in my presence this 1st day of August, 1919.

MABEL DITTENHOEFER,
Notary Public, New York County, No. 87.

54 Supreme Court of the State of New York, County of New York.

CHIPMAN, LIMITED, Plaintiff,

versus

THE THOMAS B. JEFFERY COMPANY, Defendant.

Affidavit of George W. Greiner.

STATE OF WISCONSIN,
County of Kenosha, ss:

George W. Greiner of Kenosha, Wisconsin being first duly sworn on oath deposes and says that he is a resident of the City of Kenosha in the State of Wisconsin, that he was in the employ of the Thomas B. Jeffery Company, a Wisconsin corporation, the defendant herein as its Secretary and Credit Manager, for four years up to the first day of January 1918; that he has read the Bill of Complaint filed in the above entitled cause and is familiar with the allegations set forth therein.

Affiant further states that he knows of his own knowledge that all of the transactions relating to or in any wise appertaining to the allegations and matter set forth in said Bill of Complaint, and concerning the contracts attached to and made a part of said Bill of Complaint were all considered, consummated, and did in fact occur at the City of Kenosha in the State of Wisconsin; that none of the matters or transactions set forth in said Bill of Complaint occurred within the State of New York.

Further affiant says not.

GEORGE W. GREINER.

Subscribed and Sworn to before me this 20th day of June, 1919.
[SEAL] HORACE J. MELLUM,
Notary Public.

My commission expires Aug. 27, 1922.

55 Supreme Court of the State of New York, County of New York.

CHIPMAN, LIMITED, Plaintiff,

versus

THE THOMAS B. JEFFERY COMPANY, Defendant.

Affidavit of Milo M. Smith.

STATE OF WISCONSIN,
County of Kenosha, ss:

Milo M. Smith, of Kenosha, Wisconsin being first duly sworn on oath deposes and says that he is a resident of the City of Kenosha in

the State of Wisconsin, and that he was an employee of the Thomas B. Jeffery Company, a Wisconsin corporation, the defendant herein, for and during the period covered by the Bill of Complaint filed in the above entitled cause; that this affiant has read said Bill of Complaint and the copies of contracts pertaining thereto and is familiar with each and all of the allegations set forth in said Bill of Complaint.

Affiant further states that he knows of his own knowledge that all of the transactions relating to or in any wise appertaining to the allegations and matter set forth in said Bill of Complaint, and concerning the contracts attached to and made a part of said Bill of Complaint, were all considered, consummated, and did in fact occur at the City of Kenosha in the State of Wisconsin; that none of the matters or transactions set forth in said Bill of Complaint occurred within the State of New York.

Further affiant says not.

MILO M. SMITH.

Subscribed and Sworn to before me this 20th day of June, 1919.

[SEAL.] HORACE J. MELLUM,
Notary Public.

My commission expires Aug. 27, 1922.

56 [Endorsed:] United States District Court, Southern District of N. Y. Chipman, Limited, plaintiff, against The Thomas B. Jeffery Company, defendant. Affidavits & notice of motion. Philip B. Adams, attorney for defendant, appearing specially herein. Office and P. O. address 21 Park Row, Borough of Manhattan, New York City. Filed Aug. 13, 1919.

57 United States District Court, Southern District of New York.

CHIPMAN, LTD., Plaintiff,

against

THE THOMAS B. JEFFERY COMPANY, Defendant.

CITY AND COUNTY OF NEW YORK, *ss:*

Howard H. Chipman, being duly sworn, deposes and says:

I am the Vice President of Chipman, Ltd., the plaintiff in this action, which is a New York corporation, engaged in business for many years past at 8-10 Bridge Street, New York City.

I am familiar with the facts and circumstances set forth in the complaint herein. I had charge of many of the matters therein referred to.

In the year 1916, and for many years prior thereto, the defendant did do business within the State of New York.

The defendant, in the year 1916 and for many years prior thereto, was engaged in the manufacture and sale of automobiles and automo-

bile trucks, and parts thereof and therefor. The defendant, in the year 1916, and for many years prior thereto, had agents selling its said automobiles and trucks, and parts thereof and therefor, in the State of New York, and advertisements concerning the same
58 appeared in the daily newspapers of the State of New York during said period.

The defendant, in the year 1916 and for many years prior thereto, constantly made shipments of said automobiles and trucks, and parts thereof and therefor, to its said agents in the State of New York, and the said agents sold the same to the public generally.

The said automobiles were sold under and by the trade name and designation of "Jeffery cars," "Rambler cars" and "Jeffery trucks."

In the year 1916, and for many years prior thereto, the defendant had and maintained depots in the State of New York, wherein it stored, and from which it shipped, its said motor cars and trucks, and parts thereof and therefor. In fact, as may be seen from the contracts annexed to the complaint, under the heading of "Deliveries" the defendant reserved "the right to fill the orders of the distributor (plaintiff) for motor cars and parts thereof from any of its depots at New York City." And the same provision, under the heading of "Deliveries" was made in the motor truck contract.

The defendant's name appears in the copartnership directory of the City of New York for the years 1915 and 1916, with an address at 1759 Broadway, New York City. I have not examined the city copartnership directories subsequent to the year 1915, but I believe that the defendant's name appeared therein for many years
59 prior thereto.

I believe that the defendant's name likewise appeared in the telephone directory of the City of New York for said years, and for many years prior thereto.

I personally many times passed the said place of business maintained by defendant at 1759 Broadway, New York City, and I remember that this is the place from which the Jeffery motor cars were sold; that the name "Jeffery Motor Cars" was prominently placed upon the window of said premises. Said 1759 Broadway, New York City, is only one of many like places which the defendant had and maintained in the State of New York.

In and prior to the year 1916, as stated above, the defendant did a very large business in the selling of automobiles and trucks, and parts thereof and therefor in the State of New York generally, and had agents scattered throughout the State of New York making sales thereof, and to whom the defendant almost daily made shipments of said automobiles and trucks, and parts thereof and therefor.

In the year 1916, and for many years prior thereto, so-called "Service Stations" for defendant's said automobiles and trucks, and parts thereof and therefor, were maintained in various places in the State of New York, at which defective automobiles were repaired, and various services in the repair thereof rendered to the purchasers of said automobiles.

60 On or about January 8, 1914, the defendant designated one Philip B. Adams as the person upon whom process might

be served in its behalf, and the said designation has never been revoked. Service herein was made upon said Philip B. Adams.

I submit herewith a copy of the papers filed by the defendant with the Secretary of State of the State of New York on or about July 6, 1914, as a basis for the issuance to defendant by the Secretary of State of a certificate permitting it to do business within the State of New York.

It is not correct, as stated in the affidavit of Mr. Kearney, that the said contracts annexed to the complaint were "to be performed by the defendant at the said City of Kenosha, in the State of Wisconsin, and not elsewhere." On the contrary, as will appear from said contracts, under the item of "Deliveries," the defendant was permitted to make deliveries to plaintiff from its depots in the City of New York.

Aside from this, the said motor cars and motor trucks were shipped, freight prepaid, by the defendant to the plaintiff at the City of New York, and by the plaintiff exported. As a matter of fact, said cars and trucks first came into the physical custody of the plaintiff in New York State. The plaintiff paid the defendant therefor by its check drawn on a bank in or of the City of New York, and mailed by plaintiff in the City of New York to the defendant at Kenosha, Wisconsin.

61 It is true that the plaintiff reimbursed the defendant for the freight from Kenosha, Wisconsin, to the City of New York, on motor cars and motor trucks delivered by the defendant to the plaintiff, still, the actual, physical receipt of said cars and trucks by plaintiff took place in the State of New York, so to that extent the said contracts were performed in the State of New York. The payments made therefor, as stated above, by plaintiff to defendant, were actually made by plaintiff to defendant in the State of New York.

As appears from the records of this Court, the defendant has heretofore been sued in the courts of the State of New York and in this court, and has appeared therein and defended the said suits, admitting the jurisdiction of the court, and admitting the right to be sued in the courts of the State of New York and in this court. Among other such suits, I am advised that there is one pending undetermined in this court, brought by Helene Dutrieu, plaintiff, against this defendant; that said action was brought in the Supreme Court of the State of New York, on or about July 28, 1915, against this defendant. This defendant caused said action to be removed to this court, and appeared therein generally.

The officers of the defendant, and particularly its President, Charles T. Jeffery, have frequently, in and prior to the year 1916, been in the City of New York, on business of the defendant. Said Charles T. Jeffery has been in the place of business of the plaintiff in the City of New York, and there discussed business of the defendant.

62 I have examined the deposition of Charles T. Jeffery, President of the defendant, taken in the said action brought by Helene Dutrieu, plaintiff, against this defendant, and it appears

therefrom that the following questions were asked of and answers made by the said Charles T. Jeffery:

"Q. In and about February, 1915, did your company sell 200 automobile trucks to the French Government?
A. I cannot answer that offhand.
Q. You remember generally, don't you?
A. It was about that time.
Q. Well, you recall that your company did sell 200 automobile trucks to the French Government?
A. Yes.
Q. Who, on behalf of your company, signed the written contract?
A. The name of the agent or representative who signed the contract for and on behalf of the company was W. C. Portner.
Q. Who is Mr. Portner; what are his duties in respect of the defendant company?
A. At this time?
Q. No, at that time; at the time of the signing of the contract?
A. At that time he acted as one of our employees.
Q. At the New York office?
A. At New York."

63 I therefore allege and state the fact to be that the defendant, in the year 1916 and for many years prior thereto, did do business within the State of New York.

HOWARD H. CHIPMAN.

Sworn to before me this 6th day of August, 1919.

SUSANNE JOHNSTON,
Notary Public, Kings Co., No. 28,
Kings Co. Register No. 120.

Certificate filed in New York Co. No. 52.
New York Co. Register No. 10043.

64 I, Philip B. Adams, the person designated to accept service of process issued against The Thomas B. Jeffery Company, the corporation named in the within ap-lication for license to do business in the State of New York, hereby consent to my designation for such purpose.

PHILIP B. ADAMS.

STATE OF NEW YORK,
County of New York, ss:

Be it remembered that on this 26th day of June, 1914 before me, Notary Public in and for said County and State, personally appeared Philip B. Adams, to me personally known to be the person named in and who signed the foregoing Consent of Designation as the statutory agent of The Thomas B. Jeffery Company, a corporation of the State of Wisconsin, and duly acknowledged to me that he signed the same as and for his free act and deed for the purposes therein set forth.

Given under *our* hand and notarial seal this 26th day of June, 1914.

[SEAL.] ANNA STRIZVER,
Notary Public No. 3, *Bronx County, New York.*

Certificate Filed in New York County, No. 207.

STATE OF WISCONSIN,
County of Kenosha, ss:

The Thomas B. Jeffery Company, a corporation organized and existing under and by virtue of the statu-es of the State of
65 Wisconsin, hereby makes application for a license to do business in the State of Ne York, and states as follows:

That the said The Thomas B. Jeffery Company was incorporated under the laws of the State of Wisconsin on the 14th day of June, 1910.

That the business which the said corporation proposes to pursue under its charter in the State of New York is as follows: To import, export purchase or otherwise acquire, to hold, own, mortgage, pledge, buy, sell, assign, transfer, lease or otherwise dispose of, and to invest, trade and generally deal in automobile pleasure and commercial vehicles and their parts, accessories and equipment and goods, wares and merchandise of every class and description; to store and repair automobiles and motor vehicles of all kinds and their parts and accessories. To enter into, make, perform and carry out contracts with any person, firm or corporation, public or private, relating to any matter of business of this corporation or in which it may be interested; and to conduct and carry on any lawful business or purpose whatever relating to the business above mentioned under the Statu-es of the State of New York relating to corporations and all Acts amendatory thereof and supplemental thereto. To own, lease, possess and enjoy so much real and personal estate as shall be necessary for the transaction of its business, and generally to have and possess all the powers and authority conferred upon corporations by the Laws of the State of New York in that behalf made and provided.

That the said corporation proposes to use the abbreviation
66 "Inc." in conjunction with its corporate title when used within the State of New York.

That the place within the State of New York which is to be the principal place of business of said Company in said State is 21 Park Row, New York, N. Y., and that the name of the person residing in the State of New York upon whom process against the said corporation may be served within the said State is Philip B. Adams, and the office of said person is No. 21 Park Row, New York, N. Y., which is the address of the principal place of business of said Company within said State.

That attached hereto is the written consent of the person above designated as the statutory agent of the said Company upon whom process may be served within the State of New York.

That annexed hereto is a certified copy of the Articles of Incorpo-

ration of the said Company, sworn to as a true copy thereof by an officer of said Company.

In witness whereof the said corporation has caused this instrument to be executed by its President, thereunto duly authorized, and attested by its Secretary, this 8th day of January, 1914.

THE THOMAS B. JEFFERY COMPANY,
By CHARLES T. JEFFERY,
Its President.

[CORPORATE SEAL.]

Attest:
E. S. JORDAN,
Secretary.

67 STATE OF WISCONSIN,
County of Kenosha, ss:

On the 8th day of January, 1914, before me personally came Charles T. Jeffery to me known, who, being duly sworn did depose and say that he resided in the City of Kenosha, Kenosha County, Wisconsin; that he is the President of The Thomas B. Jeffery Company, the corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation and that he signed his name thereto by like order.

Given under my hand and notarial seal at Kenosha, Wisconsin, this 8th day of January, 1914.

[SEAL.]
MILO M. SMITH,
Notary Pubic, Kenosha Co., Wis.

My commission expires Oct. 22, 1916.

STATE OF WISCONSIN,
County of Kenosha, ss:

Charles T. Jeffery, being first duly sworn on oath, deposes and says that he is the President of The Thomas B. Jeffery Company, a corporation organized and existing under and by virtue of the laws of the State of Wisconsin; that the annexed certified copy of the Articles of Incorporation of said Company is a true and complete copy of the original Articles of Incorporation of said Company.

CHARLES T. JEFFERY.

68 Subscribed and sworn to before me this 8th day of January, 1914.

[SEAL]
MILO M. SMITH,
Notary Public, Kenosha County, Wis.

My Commission Expires Oct. 22, 1916.
Certificate of Notary, No. 65.

STATE OF WISCONSIN,
County of Kenosha, ss:

Office of Clerk of Circuit Court.

I, Benj. M. De Diemar, Clerk of the Circuit Court of the County of Kenosha, in the State of Wisconsin, the said court, being a court of record, and having a seal, do hereby certify that Milo M. Smith, Esquire, whose name appears subscribed to the annexed instrument, was, at the date thereof, a Notary Public within and for said State, residing in said County, duly appointed and qualified, and empowered by the laws of said State to administer oaths, take acknowledgements of deeds, and perform such other duties as by the law of nations or according to commercial usage may be performed by Notaries Public; and that to his acts and attestations, as such full faith and credit are and ought to be given in court and out. I further certify that I am familiar with handwriting of said Notary Public and that I verily believe said signature, purporting to be his, is genuine; that the seal thereto attached is a correct impression of his official seal, and that said instrument is executed and acknowledged according to the laws of said state.

In witness whereof, I have hereunto set my hand, and affixed
69 the seal of said Court of Kenosha, in said County and State, on this 13th day of January, A. D. 1914.

[SEAL.] BENJ. M. DE DIEMAR,
Clerk of Circuit Court as Aforesaid.

United States of America,

The State of Wisconsin,

Department of State.

To all to whom these presents shall come:

I, J. S. Donald, Secretary of State of the State of Wisconsin and Keeper of the Great Seal thereof do hereby certify that the annexed copy of Articles of Incorporation of The Thomas B. Jeffery Company has been compared by me with the original articles on file in this Department and that the same is a true copy thereof, and of the whole of such original articles.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of the State at the Capitol in the City of Madison, this 20th day of Nov. A. D. 1913.

[SEAL.] J. S. DONALD,
Secretary of State.

70 [Endorsed:] United States District Court, Southern District of N. Y. Chipman, Ltd., Plaintiff, against The Thomas B. Jeffery Company, Defendant. (Copy.) Affidavit in opposition to

defendant's motion to set aside service of summons. Hays, Hershfield & Wolf, attorneys for plaintiff, No. 115 Broadway (United States Realty Building), Borough of Manhattan, New York City. Filed Aug. 13, 1919.

71 United States District Court, Southern District of New York.

#494.

CHIPMAN, LIMITED, Plaintiff,

against

THOMAS B. JEFFERY COMPANY, Defendant.

Hays, Hershfield & Wolf, Attorneys for Plaintiff; Ralph Wolf, Counsel.

Philip B. Adams, Attorney for Defendant appearing Specially; Thomas M. Kearney, Counsel.

AUGUSTUS N. HAND, *District Judge:*

The defendant moves to set aside the service of the summons in this action upon the ground that the defendant is a foreign corporation organized under the laws of the State of Wisconsin, and since August, 1916, has transacted no business in the State of New York, and had no office or place of business therein.

It appears that in August, 1916, the defendant sold all its property to the Nash Motors Company, a Maryland corporation, and thereupon discontinued business. Prior to that time it had been engaged
72 in business in the State of New York, and in 1914 designated Philip B. Adams, Esq., as the person upon whom process might be served, and on July 6, 1914, filed papers with the Secretary of State of the State of New York as a basis for the issuance to it of a certificate to do business within that State.

The action is based upon contracts made in Wisconsin and to be performed in that State.

Section 432 of the Code of Civil Procedure, Subd. 2, authorizes service of process upon a foreign corporation by delivering a copy thereof to "a person designated for the purpose and provided for in Section 16 of the General Corporation Law."

Section 16 provides:

"Such designation shall continue in force until revoked by an instrument in writing designating in like manner some other person upon whom process against the corporation may be served in this State, or until the filing in the same office of the written revocation of such consent executed by the person so designated."

Section 1780 of the Code of Civil Procedure provides that:

"An action against a foreign corporation may be maintained by a resident of the State, or by a domestice corporation, for any cause of action * * *"

Mr. Justice Holmes, in the recent case of Pennsylvania Fire Ins. Co. v. Gold Issue Mining & Milling Co., 243 U. S. 93 points out the distinction between the case where jurisdiction is obtained over
73 a foreign corporation doing business in the State where there has been a consent on the part of the corporation to be sued, and where there has not been any such consent. If the corporation is doing business within the State without appointing an agent according to the requirements of the statute, or if the statute provides for service upon some public official, jurisdiction is acquired if the statutory service is made irrespective of consent as to causes of action arising within the State.

Jurisdiction in this case is based upon a so-called estoppel on the part of the corporation to object to service in actions based upon local transactions. This estoppel has been held to be "limited to causes of action which owe their origin to the transaction of business in defiance of the statutory restrictions." See Bagdon v. Philadelphia & Reading C. & I. Co., 217 N. Y. at p. 437; Smolik v. Philadelphia & Reading C. & I. Co., 222 Fed. 148. But it was quite consistently held in the foregoing cases that a designation by a corporation of an agent to receive process takes from the case any question of due process of law and leaves nothing for the court to consider but the proper construction of the consent which the corporation has given to be sued within the jurisdiction in view of the statutory provisions.

No cases allowing actions against foreign corporations not engaged in doing business within the state have gone beyond the in-
74 surance cases where the right to sue after the company had ceased to do new business has been founded upon obligations accruing within the State. Mutual Reserve v. Phelps, 190 U. S. 147; Johnson v. Mutual Life, 104 A. D. 544. The receipt of premiums from residents of the State, or the adjustment of losses upon policies issued to residents when it was doing a business therein is regarded as a continuance of business within the State even if the corporation has abandoned issuing new policies. Mutual Life v. Spratley, 172 U. S. 602. It is undoubtedly within the power of the State to exclude the corporation from doing business within its borders and to allow it to do business upon such terms as it may prescribe, and if the corporation consents to these terms and designates a person upon whom service may be made, the process may issue against that person even upon causes of action arising outside the jurisdiction. I can, however, discover no authority which subjects a corporation to actions not arising within the State when it has ceased to do business therein. No case is cited in which the consent to be sued has been interpretated as broad enough to cover actions against the corporation which have arisen since it ceased to do business. The question is not one of constitutional law, but of the construction of a statute of the State of

New York. It is in my opinion a quite unnecessary inference
75 to be drawn from the designation of an agent that such designation was to cover actions arising outside of the State after the corporation had ceased to do business therein.

In the case of Smolik v. Philadelphia & Reading C. & I. Co., supra, Judge Learned Hand said;

"* * * There is no reason that I can see for imposing any limitation upon the effect of Section 1780 of the New York Code and as a result I find that the consents covered such actions as these."

I think the words "any limitation" must be read as applying to such facts as were before the court in that case, namely, causes of action arising outside the State where the corporation had a duly designated agent within the State and was transacting business therein.

The motion to vacate the service of the summons is therefore granted.

A. N. H., *D. J.*

August 13, 1919.

[Endorsed:] Filed Aug. 13, 1919.

76 At a Term of the United States District Court for the Southern District of New York, for the hearing of litigated motions, held on the 16 day of August, 1919, at the Post Office Building, City Hall Park, New York City.

Present: Honorable Augustus N. Hand, District Judge.

L., 20-246.

CHIPMAN, LIMITED, Plaintiff,

against

THE THOMAS B. JEFFERY COMPANY, Defendant.

A motion having been made herein for an order vacating and setting aside the service of the summons, and setting aside the summons, and dismissing the complaint for lack of jurisdiction of the person of the defendant, and said motion having regularly come on to be heard,

Now, on reading and filing the said notice of motion herein, the summons and complaint, and the affidavits of Thomas M. Kearney Charles T. Jeffery and Philip B. Adams, sworn to August 1st, 1919, the affidavits of George W. Greiner and Milo M. Smith, sworn to June 20, 1919, in support of said motion, and the affidavit of Howard H. Chipman, sworn to August 6th, 1919, and the exhibits thereto annexed in opposition thereto, and after hearing Philip B. Adams Esq., in support of said motion, and Ralph Wolf, Esq., in opposition thereto, and due deliberation having been had,

Now, on motion of Philip B. Adams, attorney for the defendant,

It is ordered that the said motion be and the same hereby
77 is in all respects granted, and the service of the summons herein be, and the same hereby is vacated and set aside, and the complaint herein dismissed for lack of jurisdiction of the person of the defendant.

AUGUSTUS N. HAND, *D. J.*

Approved as to form, the plaintiff reserving all rights as to appeal.

HAYS, HERSHFIELD & WOLF,
Attorneys for Plaintiff.

PHILIP B. ADAMS,
Attorney for Defendant.

78 [Endorsed:] United States District Court for the Southern Dist. of New York. Chipman, Limited, Plaintiff, against The Thomas B. Jeffery Company, Defendant. (Copy.) Order granting motion. Hays, Hershfield & Wolf, attorneys for plaintiff. No. 115 Broadway (United States Realty Building), Borough of Manhattan, New York City. Filed Aug. 19, 1919.

79 United States District Court for the Southern District of New York.

CHIPMAN, LIMITED, Plaintiff,

against

THE THOMAS B. JEFFERY COMPANY, Defendant.

The summons herein having been heretofore served upon Philip B. Adams, the person designated by the defendant as its agent pursuant to Section 15 of the General Corporation Law of the State of New York, and the defendant having appeared especially herein, and having moved to vacate and set aside the service of the summons, and to set aside the said summons, and to dismiss the complaint for lack of jurisdiction of the person of the defendant, and an order having been duly made by Honorable Augustus N. Hand, granting such motion,

Now, on motion of Philip B. Adams, it is

Ordered, adjudged and decreed that the service of the summons herein be and the same hereby is vacated and set aside, and the complaint of the plaintiff be and the same hereby is dismissed for lack of jurisdiction of the person of the defendant.

Dated, New York, August 19, 1919.

ALEX. GILCHRIST, JR.,
Clerk.

80 [Endorsed:] Supreme Court, New York County. Chipman, Limited, plaintiff, against The Thomas B. Jeffery Company, defendant. (Copy.) Judgment. Hays, Hershfield &

Wolf, attorneys for plaintiff, No. 115 Broadway (United States Realty Building), Borough of Manhattan, New York City. Filed Aug. 19, 1919.

81 District Court of the United States of America for the Southern District of New York, in the Second Circuit.

CHIPMAN, LTD., Plaintiff-in-Error,

vs.

THOMAS B. JEFFERY COMPANY, Defendant-in-Error.

Bond for Damages and Costs.

Know all Men by these Presents, that we Chipman, Ltd., of Borough of Manhattan, New York, as Principal, and the United States Fidelity and Guaranty Company, having an office and usual place of business at No. 47 Cedar Street, in the City of New York, County and State of New York, as Surety, are held and firmly bound unto the above named Thomas B. Jeffery Company in the sum of two hundred fifty ($250.00) dollars, to be paid to the said Thomas B. Jeffery Company for the payment of which, well and truly to be made, we bind ourselves, our and each of our heirs, representatives, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 20th day of August, 1919.

Whereas, the above named Chipman, Ltd. has prosecuted a writ of error from the United States Supreme Court to reverse the judgment of dismissal dated the 19th day of August, 1919, rendered in the above entitled suit, in the District Court of the United States for the Southern District of New York.

Now, therefore, the condition of this obligation is such, that if the above named Chipman, Ltd. shall prosecute its writ to effect, and answer all damages and costs if it fail to make its plea good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

CHIPMAN, LTD., [L. S.]
By W. A. CHIPMAN, *Pres.* [L. S.]
UNITED STATES FIDELITY AND GUARANTY COMPANY,
By ADOLPHUS A. JACKSON,
Attorney-in-fact.

Attest:
WILLIAM H. ESTWICK,
Attorney-in-fact.

STATE OF NEW YORK,
County of New York, ss:

On this 20 day of August, 1919, before me personally appeared William A. Chipman of New York City with whom I am personally

acquainted, who being by me duly sworn said: That he resides in the State of New York that he is the President of Chipman, Ltd., the corporation described in and which executed the above instrument; that he knows the corporate seal of said corporation; that the seal affixed to the within instrument is such seal; that it was so affixed by the order of the Board of Directors of said corporation; and that he signed his name thereto as President by like authority.

And the said Frank P. Buonora further says that he is acquainted with William A. Chipman and knows him to be the President of the said corporation; that the signature of the said William A. Chipman subscribed to the said instrument is in the genuine handwriting of the said William A. Chipman and was thereto subscribed by the like order of said Board of Directors and in the presence of him, the said

[L. S.] FRANK P. BUONORA,
Notary Public.

N. Y. Co. #568.

82 STATE OF NEW YORK,
County of New York, ss:

On this 20th day of August, 1919, before me personally came Adolphus A. Jackson known to me to be the Attorney-in-fact of the United States Fidelity and Guaranty Company, the corporation described in and which executed the annexed bond of Chipman, Ltd. as surety thereon, who being by me duly sworn, deposes and says, that he resides in the City of New York, State of New York, and that he is the Attorney-in-fact of the said United States Fidelity and Guaranty Company; and knows the corporate seal thereof; that said Company is duly and legally incorporated under the laws of the State of Maryland; that said Company has complied with the provisions of the Act of Congress of August 13, 1894, allowing certain corporations to be accepted as surety on bonds; that the seal affixed to the annexed bond of Chipman, Ltd., is the corporate seal of the said United States Fidelity and Guaranty Company, and was thereto affixed by order and authority of the Board of Directors of said Company; and that he signed his name thereto by like order and authority as Attorney-in-fact of said Company; and that he is acquainted with William H. Estwick and knows him to be the Attorney-in-fact of said Company; and that the signature of said William H. Estwick subscribed to said bond is in the genuine handwriting of said William H. Estwick and was thereto subscribed by order and authority of said Board of Directors, and in the presence of said deponent; and that the assets of said Company, unincumbered and liable to execution, exceed its claims, debts and liabilities, of every nature whatsoever, by more than the sum of two million dollars ($2,000,000.00).

ADOLPHUS A. JACKSON.

Sworn to, acknowledged before me, and subscribed in my presence this 20th day of August, 1919.

AUGUSTUS WALLAUER,
Notary Public, Queens County, No. 1983.

Certificate filed in New York County No. 363, Register's No. 1370, Richmond, Westchester, Nassau, Putnam, Orange, Suffolk & Rockland Counties. Term expires March 30, 1921.

[Endorsed:] District Court of the United States for the Southern District of New York. Chipman Limited, Plaintiff, against Thomas B. Jeffery Company, defendant. Bond for damages and costs. Surety: United States Fidelity and Guaranty Company, 47 Cedar Street, New York. Within bond approved Aug. 20, 1919. J. W. M., U. S. C. J. Filed Aug 20, 1919.

83 In the District Court of the United States for the Southern District of New York.

At Law. L-246.

CHIPMAN, LIMITED, Plaintiff,

against

THE THOMAS B. JEFFERY COMPANY, Defendant.

Petition for Writ of Error.

Now comes the above-named plaintiff, Chipman, Limited, by his attorneys, and says:

That this cause was commenced in the Supreme Court of the State of New York, in and for the County of New York.

That the defendant filed in said Court a petition and bond for the removal of said cause to this Court, and a copy of the record in said cause in said State Court certified by the Clerk of said State Court under the seal of the said State Court was filed in this Court on the 9th day of July, 1919.

That thereafter and on August 16th, 1919, this Court made an order in this cause granting the defendant's motion to vacate and set aside the service of the summons herein upon the defendant and dismissing the complaint herein for lack of jurisdiction of the person of the defendant.

That thereafter, during the same term of Court, and on August 19th, 1919, judgment was rendered by this Court, vacating and setting aside the service of the summons herein and dismissing the complaint herein for lack of jurisdiction of the person of the defendant. That in this cause, the jurisdiction of the Court
84 was and is in issue, and the only question arising herein, and the only question tried and decided by the Court was the question of the jurisdiction of this Court.

That this Court, in and by said order and judgment, determined and decided in favor of the defendant and against the plaintiff; that the service of the summons herein was not a legal and valid service of the summons on the defendant, and that the said summons and said service thereof should be vacated and set aside, and that the Court had no jurisdiction of the person of the defendant.

That the plantiff is aggrieved by the said decisions in this Court.

The plaintiff further says that in said order and judgment vacating and setting aside the service of the summons and dismissing of the complaint herein for lack of jurisdiction of the person of the defendant, errors were committed on the question of the jurisdiction of the Court to the prejudice and great damage of the plaintiff, all of which will more in detail appear in the record of this cause and from the Assignment of Errors which is presented and filed with this petition.

Wherefore, this plaintiff, considering itself aggrieved, prays that a Writ of Error may be allowed and may issue in its behalf to the Supreme Court of the United States to the end that the said order, ruling, decision and judgment may be reviewed by the Supreme Court of the United States upon the question of the jurisdiction of the Court thereby determined, and that the errors so complained of may be corrected, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to said Supreme Court of the United States.

85 Dated, New York, August 19th, 1919.

HAYS, HERSHFIELD & WOLF,
Attorneys for Plaintiff.

Office & P. O. Address, 115 Broadway, Manhattan, New York City.

DANIEL P. HAYS, Esq.,
Of Counsel.

The foregoing petition for a Writ of Error was duly presented to me this 19th day of August, 1919, before the allowance of the Writ of Error to the Supreme Court of the United States in said cause.

AUGUSTUS N. HAND,
U. S. D. J.

86 [Endorsed:] At Law. L-246. United States District Court, Southern District of New York. Chipman, Limited, plaintiff, against The Thomas B. Jeffery Company, defendant. Copy. Petition for Writ of Error and order thereon. Hays, Hershfield & Wolf, attorneys for plaintiff, No. 115 Broadway, (United States Realty Building), Borough of Manhattan, New York City. Due service of a copy of the within petition is hereby admitted. Dated, New York, Aug. 20, 1919. Philip B. Adams, att'y def't. Filed Aug. 19, 1919.

87 In the District Court of the United States for the Southern District of New York.

CHIPMAN, LIMITED, Plaintiff,

against

THE THOMAS B. JEFFERY COMPANY, Defendant.

Assignment of Errors.

Now comes the above-named plaintiff, Chipman, Limited, by its counsel, and in connection with its petition for a Writ of Error to the Supreme Court of the United States, assigns error in the record and proceeding in the above-entitled cause, as follows:

I. That the court erred in granting the defendant's motion to vacate and set aside the service of the summons herein.

II. That the Court erred in adjudging the services of the summons herein insufficient to confer jurisdiction.

III. That the Court erred in dismissing the complaint herein for lack of jurisdiction of the person of the defendant.

IV. That the court erred in entering the order of August 16th, 1919, vacating and setting aside the service of the summons and dismissing the action for the reasons aforesaid.

V. That the Court erred in entering judgment on August 19th, 1919, vacating and setting aside the service of the summons and dismissing the action for the reasons aforesaid.

VI. That the Court erred in not holding that the service of
88 the summons herein was proper and in all respects valid.

VII. That the Court erred in not holding that it had jurisdiction of the person of the defendant.

Dated, N. Y., August 19th, 1919.

HAYS, HERSHFIELD & WOLF,
Attorneys for Plaintiff.

Office and P. O. Address, 115 Broadway, Manhattan, New York City.

DANIEL P. HAYS, ESQ.,
Of Counsel.

The foregoing Assignment of Errors was duly presented to me this August 19, 1919, before the allowance of the Writ of Error to the Supreme Court of the United States in said cause.

AUGUSTUS N. HAND.

89 [Endorsed:] At Law. L-246. United States District Court. Southern District of New York. Chipman, Limited, Plaintiff, against The Thomas B. Jeffery Company, Defendant. Copy. Assignments of error. Hays, Hershfield & Wolf, attorneys for plaintiff. No, 115 Broadway (United States Realty Building), Borough of Manhattan, New York City. Due service of a copy of the within is hereby admitted. Dated, New York, Aug. 20, 191—. Philip B. Adams, Atty. Deft. Filed Aug. 19, 1919.

90 In the District Court of the United States for the Southern District of New York.

CHIPMAN, LIMITED, Plaintiff,

against

THE THOMAS B. JEFFERY COMPANY, Defendant.

Certificate.

An order having been entered herein on August 19th, 1919, and judgment having been entered herein on August 19th, 1919, vacating and setting aside the service of the summons herein and dismissing the complaint herein for lack of jurisdiction of the person of the defendant, now, therefore, this Court, in pursuance of the Third paragraph of the Fifth Section of the Act of Congress, approved March 3d, 1891, hereby certifies to the Supreme Court of the United States that in the above-entitled cause the jurisdiction of this Court of the person of the defendant was in issue and was decided adversely to the plaintiff, and that by reason thereof, and not otherwise, the order and judgment of August 19th, 1919, shown in the record herein, were entered; and that pursuant to said Act above-mentioned, the following questions are hereby certified to the Supreme Court:

I. Whether in the service of the summons, as shown by the record herein, upon Philip B. Adams, this Court acquired jurisdiction of the person of the defendant.

II. Whether upon the facts shown by the record the Court acquired jurisdiction of the person of the defendant.

III. Whether the service of a summons herein upon said Philip B. Adams was a legal service of process upon the defendant so as to vest in this Court jurisdiction herein of the person of the defendant.

Dated, N. Y., August 19th, 1919.

AUGUSTUS N. HAND,
United States District Judge.

91 [Endorsed:] United States District Court, Southern District of New York. Chipman, Limited, Plaintiff, against The Thomas B. Jeffery Company, Defendant. Copy. Certificate and Notice of Filing. Hays, Hershfield & Wolf, attorneys for plaintiff.

No. 115 Broadway, (United States Realty Building), Borough of Manhattan, New York City. Due service of a copy of the within is hereby admitted. Dated, New York, Aug. 20, 1919. Philip B. Adams, Atty. for Deft. Filed Aug. 19, 1919.

92 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judges of the District Court of the United States for the Southern District of New York, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the District Court, before you, or some of you, between Chipman, Limited, Plaintiff in error, and The Thomas B. Jeffery Company, defendant in error, a manifest error hath happened, to the great damage of the said Chipman, Limited plaintiff in error, as is said and appears by its complaint,

We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Judges — the Supreme Court of the United States, at Washington, District of Columbia, together with this writ, so that you have the same at the said place, before the Judges aforesaid, on the 18th day of September, 1919, that the record and proceedings aforesaid being inspected, the said Judges of the Supreme Court of the United States may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness, The Honorable Edward D. White, Chief Justice of the United States, this 19th day of August, in the year of our Lord One Thousand Nine Hundred and Nineteen and of the Independence of the United States the One Hundred and forty-fourth.

[SEAL.] ALEX. GILCHRIST, JR.,
Clerk of the District Court of the U. S. A. for the Southern Dist. of N. Y., in the Second Circuit.

93 The foregoing writ is hereby allowed.

AUGUSTUS N. HAND,
U. S. District Judge.

94 [Endorsed:] At Law. L20-246. Supreme Court of the United States. Chipman, Limited, Plaintiff in Error, against The Thomas B. Jeffery Company, Defendant in Error. Copy. Writ of error. Hays, Hershfield & Wolf, attorneys for Plaintiff in Error No. 115 Broadway, (United States Realty Building), Borough of Manhattan, New York City. Due service of a copy of the within Writ of Error is hereby admitted. Dated, New York, 20 Aug. 1919. Philip B. Adams, Atty. for Deft. Filed August 19, 1919.

95 By the Honorable Augustus N. Hand, One of the Judges of the District Court of the United States for the Southern District of New York, in the Second Circuit, to The Thomas B. Jeffery Company:— Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, to be holden at Washington, in the District of Columbia, on the 18th day of September, 1919, pursuant to a Writ of Error filed in the Clerk's Office of the District Court of the United States for the Southern District of New York, wherein Chipman, Limited, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error in said Writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 19th day of August, in the year of our Lord One Thousand Nine Hundred, and Nineteen, and of the Independence of the United States the One Hundred and Forty-Fourth.

AUGUSTUS N. HAND,
Judge of the District Court of the United States for the Southern District of New York, in the Second Circuit.

96 [Endorsed:] At Law. L-246. Supreme Court of the United States. Chipman, Limited, Plaintiff in Error, against The Thomas B. Jeffery Company, Defendant in Error. Copy. Citation. Hays, Hershfield & Wolf, Attorneys for Plaintiff in Error, No. 115 Broadway (United States Realty Building), Borough of Manhattan, New York City. Due service of a copy of the within citation is hereby admitted. Dated, New York, Aug. 20, 1919. Philip P. Adams, Atty. for Deft. Filed Aug. 20, 1919.

97 United States District Court, Southern District of New York.

CHIPMAN, LIMITED, Plaintiff,

vs.

THE THOMAS B. JEFFERY COMPANY, Defendant.

Stipulation on Appeal Record.

It is hereby Stipulated and Agreed, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated, New York, August 20, 1919.

HAYS, HERSHFIELD & WOLF,
Attorneys for Plaintiff.

PHILIP B. ADAMS,
Attorney for Defendant, Appearing Specially.

98 [Endorsed:] United States District Court, Southern District of New York. Chipman, Limited, Plaintiff, vs. The Thomas B Jeffery Co., Defendant. Stipulation as to Correctness of Appeal Record. Hays, Hershfield & Wolf, Attorneys for Plaintiff, 115 Broadway, Borough of Manhattan, City of New York.

99 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Law. 20—246.

CHIPMAN, LIMITED, Plaintiff,

vs.

THE THOMAS B. JEFFERY COMPANY, Defendant.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 20th day of August, in the year of our Lord one thousand nine hundred and nineteen, and of the Independence of tthe said United States the one hundred and forty-fourth.

[Seal District Court of the United States, Southern District of N. Y.]

ALEX. GILCHRIST, JR.,
Clerk.

Endorsed on cover: File No. 27,271. S. New York. D. C. U. S. Term No. 516. Chipman, Limited, plaintiff in error, vs. The Thomas B. Jeffery Company. Filed August 27th, 1919. File No. 27,271.

Office Supreme Court, U.S.
FILED
NOV 15 1919
JAMES D. MAHER
CLERK

No. 516

Supreme Court of the United States

OCTOBER TERM, 1919.

CHIPMAN, LTD.,

Plaintiff-in-Error,

against

THE THOMAS B. JEFFERY COMPANY,

Defendant-in-Error.

NOTICE OF MOTION TO ADVANCE WRIT OF ERROR UNDER RULE 32, OR, IN THE ALTERNATIVE, THAT IT BE TRANSFERRED TO THE SUMMARY DOCKET FOR HEARING.

HAYS, HERSHFIELD & WOLF,
Attorneys for Plaintiff-in-Error.

The Hecla Press, 67 Warren St., N. Y. Tel. 6280 Barclay.

Supreme Court of the United States

OCTOBER TERM, 1919—NUMBER 516.

CHIPMAN, LIMITED,
Plaintiff-in-Error,

against

THE THOMAS B. JEFFERY COMPANY,
Defendant-in-Error.

Notice of Motion to Advance Writ of Error Under Rule 32, or, in the Alternative, that it be Transferred to the Summary Docket for Hearing.

NOW COMES CHIPMAN, LIMITED, the plaintiff-in-error, by its counsel, and moves the Court that the above-entitled case be advanced under Rule 32 and be heard under the rules prescribed by Rule 6 in regard to motions to dismiss writs of error and appeals upon the ground that the case is brought to this Court by writ of error under Section 5 of the Act of March 3, 1891, Chapter 517, and the only question in issue is the question of the jurisdiction of the Court below; or, in the alternative, that it be transferred to the summary docket for hearing and determination.

The action was brought by the plaintiff-in-error in the Supreme Court of the State of New York.

Thereafter, the defendant filed in the State Court a petition and bond for the removal of the action to the District Court of the United States for the Southern District of New York, on the ground of diverse citizenship (Printed Record, pp. 20-26).

After the filing of the record on removal in the Court below, the defendant made a motion in that Court for an order "vacating and setting aside the service of the summons and setting aside the summons and dismissing the complaint for lack of jurisdiction of the person of the defendant" (Printed Record, p. 27).

The Court below granted the defendant's motion, and rendered judgment accordingly (Printed Record, pp. 41, 42).

The recitals in the order and judgment show the jurisdictional question.

The certificate made by the Judge before whom all the proceedings in the action in the Court below were had contains the following:

> "That in the above entitled cause the jurisdiction of this Court of the person of the defendant was in issue and was decided adversely to the plaintiff, and that by reason thereof, and not otherwise, the order and judgment of August 19, 1919, shown in the record herein, were entered" (Printed Record, p. 48).

The petition of plaintiff for a writ of error (Printed Record, p. 45), the order of the Court thereon (p. 46) and the assignments of error (p. 47) likewise show that the only question arising in the case and the only question tried and decided

by the Court below was the question of the jurisdiction of that Court.

It is apparent from the printed record and the printed brief or argument herewith submitted, that the case is of such a character as not to require extended argument.

It is therefore asked that the writ of error herein be advanced under Rule 32, or, in the alternative, that it be transferred to the summary docket for hearing.

The printed brief or argument for the plaintiff-in-error is herewith submitted to the Court as prescribed in Subdivision 4 of Rule 6.

Dated, New York City, New York, November 10, 1919.

DANIEL P. HAYS,
Counsel for Plaintiff-in-Error.

To

PHILIP B. ADAMS,
Counsel for Defendant-in-Error.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1919—NUMBER 516.

CHIPMAN, LIMITED,
Plaintiff-in-Error,

against

THE THOMAS B. JEFFERY COMPANY,
Defendant-in-Error.

Sir:

PLEASE TAKE NOTICE that I shall present and make the foregoing motion in the Supreme Court of the United States, at the place of holding said Court, in the City of Washington, District of Columbia, on Monday, December 8, 1919, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, and at the same time and place I shall submit to said Court the printed brief or argument for the plaintiff-in-error in the above-entitled case, a copy of which is herewith served upon you in accordance with Rules 32 and 6 of said Court.

Dated, New York City, New York, November 10, 1919.

DANIEL P. HAYS,
Counsel for Plaintiff-in-Error.

To

PHILIP B. ADAMS, Esq.,
Counsel for Defendant-in-Error.

Office Supreme Court, U. S.
FILED
NOV 15 1919
JAMES D. MAHER,
CLERK

No. 516

Supreme Court of the United States

OCTOBER TERM, 1919.

CHIPMAN, LTD.,
Plaintiff-in-Error,

against

THE THOMAS B. JEFFERY COMPANY,
Defendant-in-Error.

BRIEF ON BEHALF OF PLAINTIFF-IN-ERROR.

HAYS, HERSHFIELD & WOLF,
Attorneys for Plaintiff-in-Error.

DANIEL P. HAYS,
RALPH WOLF,
of Counsel.

The Hecla Press, 57 Warren St., N. Y. Tel. 6280 Barclay.

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Supreme Court of the United States

CHIPMAN, LTD., Plaintiff-in-Error, against THE THOMAS B. JEFFERY COMPANY, Defendant-in-Error.	October Term, 1919. Numbered 516.

BRIEF ON BEHALF OF PLAINTIFF-IN-ERROR.

Statement of Case.

This action was brought by plaintiff-in-error (hereinafter referred to as the plaintiff) against the defendant-in-error (hereinafter referred to as the defendant), to recover damages for breach of certain contracts, some of which are in writing and are annexed to the complaint.

The plaintiff is a New York corporation. The defendant is a Wisconsin corporation.

The action was originally commenced in the Supreme Court of the State of New York. The defendant caused the action to be removed to the

United States District Court for the Southern District of New York, and thereafter moved therein for an order "vacating and setting aside the service of the summons, and setting aside the summons, and dismissing the complaint for lack of jurisdiction of the person of the defendant" (p. 27). By order (p. 41) and judgment (p. 42) of the District Court, this motion was granted. The service of the summons was "vacated and set aside, and the complaint herein dismissed for lack of jurisdiction of the person of the defendant" (p. 42).

The plaintiff, upon the certificate of the District Judge (p. 48), by writ of error, brings directly to this Court for review the said order and judgment.

> *Chicago Board of Trade* v. *Hammond Elevator Co.*, 198 U. S., 424.

The action was commenced by the service of summons upon one Philip B. Adams, the person designated by the defendant as the one upon whom process might be served within the State of New York, in accordance with Sections 15 and 16 of the New York General Corporation Law (p. 36).

In his certificate, the District Judge certified to this Court the following question, among others, which sufficiently presents the question at issue, namely:

> "Whether in the service of the summons, as shown by the record herein, upon Philip B. Adams, this Court acquired jurisdiction of the person of the defendant" (p. 48).

The State of New York, by Sections 15 and 16 of the General Corporation Law (which, so far as rele-

vant, are herewith printed in full),* has provided that a foreign corporation shall not do business within the State unless it has obtained a certificate from the Secretary of State. It may not maintain any action in the New York State courts "upon any contract made by it in this State, unless, before the making of the contract, it has procured such certificate." Where such certificate is not procured the business, though unlicensed, is not illegal; the contract is not void; it may be enforced in other

---

* "Section 15. No foreign stock corporation other than a moneyed corporation, shall do business in this state without having first procured from the secretary of state a certificate that it has complied with all the requirements of law to authorize it to do business in this state, and that the business of the corporation to be carried on in this state is such as may be lawfully carried on by a corporation incorporated under the laws of this state for such or similar business, or if more than one kind of business, by two or more corporations so incorporated for such kinds of business respectively. The secretary of state shall deliver such certificate to every such corporation so complying with the requirements of law. No foreign stock corporation doing business in this state shall maintain any action in this state upon any contract made by it in this state, unless prior to the making of such contract it shall have procured such certificate.

"Section 16. Before granting such certificate the secretary of state shall require every such foreign corporation to file in his office a sworn copy in the English language of its charter or certificate of incorporation and a statement under its corporate seal, and the signature of its president, vice-president or other acting head, particularly setting forth the business or objects of the corporation which it is engaged in carrying on or which it proposes to carry on within the state, and a place within the state which is to be its principal place of business, and designating a person upon whom process against the corporation may be served within the state. The person so designated must have an office or place of business at the place where such corporation is to have its principal place of business within the state, and such designation must specify such office or place of business of the said person so designated, and if it is within a city the street and street number, if any, or other suitable designation of the particular locality. Such designation shall be accompanied with the written consent of the person designated and shall continue in force until revoked by an instrument in writing designating in like manner some other person upon whom process against the corporation may be served in this state or until the filing in the same office of a written revocation of said consent executed by the person so designated."

jurisdictions; all that is lost by the corporation is the right to sue in the State courts.

Bagdon v. *Philadelphia & Reading Coal & Iron Co.*, 217 N. Y., 432.
Lupton's Sons Co. v. *Auto Club of America*, 225 U. S., 489.

To obtain such certificate, however, there are conditions that must be fulfilled. One of them is a stipulation to be filed in the office of the Secretary of State designating "a place within the State which is to be its principal place of business, and designating a person upon whom process against the corporation may be served within the State. * * * Such designation shall be accompanied with the written consent of the person designated, *and shall continue in force until revoked" by the filing in the same office of a written revocation, etc.*

The defendant complied with these sections of the General Corporation Law. July 6, 1914, it filed a designation certifying "that the place within the "State of New York which is to be the principal "place of business of said Company in said State is "21 Park Row, New York, N. Y., and that the name "of the person residing in the State of New York "upon whom process against the said corporation "may be served within the said State is Philip B. "Adams" (p. 36).

The defendant attached thereto the written consent of said Adams as "the statutory agent of the said Company upon whom process may be served within the State of New York" (p. 36).

The designations by the defendant of its said principal place of business and of said Adams as its statutory agent, were never revoked (p. 34). So

that, at the time of the commencement of this action, the same were in full force and effect.

The application made by the defendant to the Secretary of State for a certificate authorizing it to do business within the State of New York is printed in this record in full on pages 35 to 38.

The motion to dismiss the case for lack of jurisdiction was made and granted upon the sole ground that at the time of the service of the summons the defendant was not engaged in business in the State of New York.

The defendant does not pretend that it at no time engaged in business in the State of New York. Its claim is that it has not, since August 16, 1916, engaged in business in the State of New York (p. 29). Prior to this date it was so engaged in business within the State, as the learned Judge below held (p. 39).

In connection with this claim on the part of the defendant it must be borne in mind that in its application to the Secretary of State for a certificate to do business within the State of New York, the defendant had designated No. 21 Park Row, New York, N. Y., as "the principal place of business of said Company in said State." This address continued as the "principal place of business" of the Company until revoked. It never was revoked. Likewise the designation of said Adams as its statutory agent continued in force until revoked. It never was revoked.

It is conceded that at all times, even subsequent to August 16, 1916, defendant had the right to transact business within the State of New York, and could come therein and transact such business as it chose. This right to transact business within

the State of New York was always open to the defendant, even though it did not see fit to exercise the same.

At the time of the making of the contracts referred to in the complaint, the defendant was concededly engaged in business in the State of New York. These contracts expired by limitation on July 31, 1915. The breaches thereof alleged in the complaint occurred on or before July 31, 1915. It, therefore, further appears that during the period in which the said contracts were in force and when the breaches thereof occurred the defendant was concededly engaged in business in the State of New York.

In order to make the above clear, a brief chronological statement is herewith given:

January 23, 1914—Agreement marked Exhibit A, entered into between plaintiff and defendant (p. 9). This agreement continued in effect until July 31, 1915 (p. 4).

January 4, 1914—Agreement marked Exhibit B, entered into between plaintiff and defendant (p. 14). This agreement continued in effect until July 31, 1915 (p. 6).

July 6, 1914—*Defendant duly complied with Corporation Laws of the State of New York permitting it to do business within that State and designated Philip B. Adams as the person upon whom process could be served* (pp. 35-38).

November 16, 1914—Agreement marked Exhibit C, entered into between plaintiff and defendant

(p. 18). This agreement continued in effect until July 31, 1915 (p. 6).

December 11, 1914—Further agreement entered into between plaintiff and defendant amending Exhibit B (p. 6).

February 3, 1915—Further agreement entered into between plaintiff and defendant (p. 7).

August 16, 1916—Defendant claims that it thereafter transacted no business within the State of New York.

March 17, 1919—This action commenced by service of process upon Philip B. Adams (p. 1).

The contracts themselves contemplated that they might be performed within the State of New York. They provided "the manufacturer (defendant) reserves the right to fill orders of the distributor (plaintiff) for motor cars and parts from any of its depots at New York City. In such case, the cars and parts delivered to the distributor shall be settled for by the payment by the distributor of the net purchase price therefor at the time of the delivery of the same, together with all transportation charges, etc." (Exhibit A, p. 10).

A similar provision was contained in Exhibit B (p. 15).

Specification of the Errors Relied Upon.

While there are seven assignments of error set forth (p. 47), a single question is raised, to wit: Whether the learned Court below erred in vacating and setting aside the service of the summons and dismissing the action for lack of jurisdiction of the person of the defendant. This is sufficiently raised by the fourth and fifth assignments of error, which read:

> "IV. That the Court erred in entering the order of August 16th, 1919, vacating and setting aside the service of the summons and dismissing the action for reasons aforesaid.
>
> V. That the Court erred in entering judgment on August 19th, 1919, vacating and setting aside the service of the summons and dismissing the action for the reasons aforesaid."

POINT I.

The defendant having filed an express consent that made service upon its designated agent the equivalent of personal service, no constitutional question is involved.

As we have before shown, the defendant designated, in express terms, an agent to receive service of process against it, and agreed that service upon its designated agent should be the equivalent of personal service. In these circumstances, no question of constitutional law is left open.

Pennsylvania Fire Ins. Co. v. *Gold Issue Mining Co.*, 243 U. S., 93.

In this case the Fire Insurance Company issued, in Colorado, to the Mining Company, a policy of insurance, insuring certain buildings in Colorado. The Fire Insurance Company had obtained a license to do business in Missouri, and to that end, in compliance with the Missouri Revised Statutes, filed with the Superintendent of the Insurance Department a power of attorney consenting that service of process upon the Superintendent should be deemed personal service upon the Company so long as it should have liabilities outstanding in the State.

The action was begun by service upon the Superintendent. The Insurance Company set up that the service was insufficient, except in suits upon Missouri contracts, and that if the statute were construed to sustain the service, it encountered the 14th amendment by denying to the defendant due process of law. The Supreme Court of Missouri held that the statute applied and was consistent with the Constitution of the United States.

In affirming the judgment of the Supreme Court of Missouri, Mr. Justice Holmes said, at page 95:

> "The construction of the Missouri statute thus adopted hardly leaves a constitutional question open. The defendant had executed a power of attorney that made service on the Superintendent the equivalent of personal service. If by a corporate vote it had accepted service in this specific case, there would be no doubt of the jurisdiction of the state Court of a transitory action of contract. If it had appointed an agent authorized in terms to receive service in such cases, there would be equally little doubt. It did appoint an agent in language that rationally might be held to go to that length. The

language had been held to go to that length, and the construction did not deprive the defendant of due process of law, even if it took the defendant by surprise, which we have no warrant to assert."

In *Gibbs* v. *Queen City Insurance Co.*, 63 N. Y., 114, in discussing a similar statute, and the effect of the acceptance of the benefits thereof by a foreign corporation, the Court, per Folger, *J.*, said (p. 128):

> "Is not the enactment of the statute by the legislature a proffer to the defendant of the power to do business in this State, if it will subject itself to the jurisdiction of our courts, and is not the acceptance of that proffer by the defendant a submission to that jurisdiction? If the defendant had authorized an attorney to appear for it on the record, in the Supreme Court, in this case, it would have been a voluntary appearance and a submission to jurisdiction, and the court would have obtained jurisdiction of the person and could have rendered a judgment *in personam*. How does it differ in principle that in anticipation of any and all suits which may be brought against it, it nominates a person upon whom service of process against it shall be as effectual as service of the same process upon it? In my judgment, the existence of an agent made in that way, for that purpose, and upon such inducement and after such statutory agreement, meets the whole principle upon which rests a substituted service as set forth in the cases above cited. The agent is created to manage the matter for it of the reception and transmission of process in suits to be commenced against it, thus making him, in an especial manner, a proper person for a

substituted service, as being appointed especially therefor by the absent party."

It is well settled that a corporation created by one State may transact business in another State only with the consent, expressed or implied, of the latter State, and that such consent may be accompanied by such conditions as the latter State may think fit to impose, provided they are not repugnant to the Constitution or laws of the United States.

Cable v. *U. S. Life Ins. Co.*, 191 U. S., 288.

In the case at hand, the State of New York has offered to foreign corporations the right, upon certain conditions, to transact business therein. The defendant accepted the offer. In accepting the offer, it designated a principal place of business within the State and a statutory agent upon whom process could be served. The offer of the State, on the one hand, and the acceptance thereof by the defendant, on the other hand, constituted a contract. The agreement was, among other things, that service could be made upon the statutory agent until his designation was revoked.

In its acceptance of the offer of the State, the defendant became entitled to the same right to transact business as a domestic corporation.

Lancaster v. *Amsterdam Improvement Co.*, 140 N. Y., 576, 588.

A foreign corporation cannot plead the Statute of Limitations.

Olcott v. *Tioga R. R.*, 20 N. Y., 210.

But by obtaining the right to do business within the State, the defendant became entitled to invoke the Statute of Limitations, as if it were a domestic corporation.

> *Wehrenberg* v. *N. Y., N. H. & H. R. R.*, 124 N. Y. App. Div., 205.

If, therefore, the cause of action in the case at hand were barred by the running of the Statute of Limitations, and the plaintiff had sued the defendant thereon, the defendant could have successfully pleaded the statute.

> *Wehrenberg* v. *N. Y., N. H. & H. R. R.* (*supra*).

The defendant has thus had and accepted the benefits of compliance with Sections 15 and 16 of the General Corporation Law. Surely it does not lie in its mouth to now say that it is not subject to the burdens thereof.

The case at hand is entirely different from *Old Wayne Mutual Life Ins. Assn.* v. *McDonough*, 204 U. S., 8, and *Simon* v. *Southern Railway Co.*, 236 U. S., 115, *for the reason that in those two cases the foreign corporations had not designated an agent upon whom process could be served.* An attempt was made to hold them by service upon a public officer, whom the statute required them to designate as their agent, but whom they had refused or failed to designate.

> *Pennsylvania Fire Ins. Co.* v. *Gold Issue Mining Co.*, 243 U. S., 93.
>
> *Bagdon* v. *Philadelphia & Reading Coal & Iron Co.*, 217 N. Y., 432.
>
> *Smolik* v. *Philadelphia & Reading Coal & Iron Co.*, 222 Fed. Rep., 148.

As pointed out in the *Pennsylvania Fire Insurance Company* case (*supra*), "the case of service upon an agent voluntarily appointed was left untouched."

The learned Judge below conceded that "the question is not one of constitutional law, but of the construction of a statute of the State of New York" (p. 40).

POINT II.

The service of the summons made upon the designated agent gave to the Court jurisdiction of the person of the defendant.

(A) It is not open to argument that the Supreme Court of the State of New York has jurisdiction of an action by plaintiff, a domestic corporation, against the defendant, a foreign corporation, for a cause of action based on contract.

Section 1780 of the New York Code of Civil Procedure provides that:

> *"An action against a foreign corporation may be maintained by a resident of the State, or by a domestic corporation, for any cause of action.* An action against a foreign corporation may be maintained by another foreign corporation, or by a non-resident, in one of the following cases only:
>
> 1. Where the action is brought to recover damages for the breach of a contract made within the State, or relating to property situated within the State, at the time of the making thereof.

2. Where it is brought to recover real property situated within the State, or a chattel which is replevied within the State.

3. Where the cause of action arose within the State, except where the object of the action is to affect the title to real property situated without the State.

4. Where a foreign corporation is doing business within this State."

"Jurisdiction does not fail because the cause of action sued upon has no relation in its origin to the business here (in New York State) transacted. That in principle was our ruling in *Bagdon* v. *Philadelphia & Reading Coal & Iron Co.* (217 N. Y. 432, 438). We applied it there to a case where service had been made on an agent designated by the corporation under Section 16 of the General Corporation Law. It applies, however, with equal force, to a case where service has been made upon an officer or managing agent. The essential thing is, that the corporation shall have come into the State. When once it is here, it may be served, and the validity of service is independent of the origin of the cause of action."

Tauza v. *Susquehanna Coal Co.*, 220 N. Y., 259, 268;

Grant v. *Cananea Consolidated Copper Co.*, 189 N. Y., 241.

It is only fair to point out that the decision of the learned Judge below was put upon the sole ground that the service of the summons did not give to the Court jurisdiction of the person of the defendant, and not upon the ground that jurisdiction over the subject matter of the cause of action was lacking.

(B) It is equally clear that the service of the summons upon the designated agent gave to the Court jurisdiction over the person of the defendant.

Section 432 of the New York Code of Civil Procedure provides that:

> "Personal service of the summons upon a defendant, being a foreign corporation, must be made by delivering a copy thereof, within the State, as follows:
>
> 1. To the president, vice-president, treasurer, assistant treasurer, secretary or assistant secretary; or, if the corporation lacks either of those officers, to the officer performing corresponding functions, under another name.
>
> 2. *To a person designated for the purpose as provided in section sixteen of the general corporation law.*
>
> 3. If such a designation is not in force, or if neither the person designated, nor an officer specified in subdivision first of this section, can be found with due diligence, and the corporation has property within the State, or the cause of action arose therein; to the cashier, a director, or a managing agent of the corporation, within the State.
>
> 4. If the person designated as provided in section sixteen of the general corporation law dies or removes from the place where the corporation has its principal place of business within the state and the corporation does not within thirty days after such death or removal designate in like manner another person upon whom process against it may be served within the State, process against the corporation in an action upon any liability incurred within this State or

> if the corporation has property within the State may after such death, removal or revocation and before another designation is made be served upon the secretary of state."

From the above section of the Code it appears that under subdivision "1" service of the summons may be made by delivering a copy thereof to an officer of the foreign corporation. Under subdivision "2" a copy thereof may be delivered to the person designated for that purpose in Section 16 of the General Corporation Law. Under subdivision "3," if such designation is not in force and if no officer specified in subdivision "1" can be found, *and the corporation has property within the State, or the cause of action arose therein*, the summons may be delivered to the cashier, a director, or managing agent. Under subdivision "4," if the designated agent dies or removes from the principal place of business of the foreign corporation, service may be made upon the Secretary of State, provided *the liability is incurred within the State or the corporation has property therein.*

These limitations upon service are very significant. If the corporation has actually designated an agent pursuant to Section 16 of the General Corporation Law, then under subdivision "2" there is no limitation placed upon the service. But if there is no such designation in force, then it is provided, under subdivision "3," that service may be made upon a managing agent, etc., only in the event that "the corporation has property within the State, or the cause of action arose therein."

It is significant that there is no such limitation in the case of an actually designated agent; that is to say, in the case of an actually designated agent

it is not necessary that "the corporation has property within the State, or the cause of action arose therein," as it is in the case of a corporation which has not designated an agent for service of summons.

Again, under subdivision "4," we find that if the designated agent dies, or removes, that service may be made upon the Secretary of State only if the liability be "incurred within the State, or if the corporation has property within the State."

Here, again, it is significant to note that this limitation does not exist under subdivision "2." Under subdivision "2," in the case of a designated agent, there is no limitation. Under subdivision "3," in case there is no designated agent, the corporation must have property within the State, or the cause of action must arise therein. Under subdivision "4," if the designated agent dies or removes, then it is essential that the liability be incurred within the State, or that the corporation have property therein.

All this accentuates and emphasizes the fact that in the case of a designated agent no limitation of any kind is imposed.

As stated by Cardozo, *J.*, in *Bagdon* v. *Philadelphia & Reading Coal & Iron Co.*, 217 N. Y., page 432, at page 436:

> "The actions in which he (the designated agent) is to represent the corporation are not limited. The meaning must therefore be that the appointment is for any action which under the laws of this State may be brought against a foreign corporation."

We have shown (in Part A hereof) that a domestic corporation may sue a foreign corporation upon any contract, no matter where made or breached.

In *Bagdon* v. *Philadelphia & Reading Coal & Iron Co.*, 217 N. Y., page 432, the action was brought by plaintiff, a resident of the State of New York, against the defendant, a Pennsylvania corporation. *The cause of action was breach of contract made in Pennsylvania.* Service was made on the designated agent. The Court of Appeals sustained the service, and held that the Supreme Court, by such service of summons, acquired jurisdiction over the person of the defendant. That case would seem to be conclusive here.

There is only one possible distinction. In the *Bagdon* case the defendant was doing business within the State of New York *at the time of service of the summons.* In the case at hand, it is conceded that when the contracts in question were made and when the alleged breaches thereof occurred the defendant was doing business within the State.

As we have heretofore pointed out, Section 432 of the Code of Civil Procedure does not require, in the case of a designated agent, that the corporation should be doing business within the State at the time of the service of the summons.

In *Woodward* v. *Mutual Reserve Life Ins. Co.*, 178 N. Y., 485, an action was brought upon a North Carolina judgment. In North Carolina service was made upon the Superintendent of Insurance, after the defendant had withdrawn from the State, ceased to do business therein, and had even attempted to expressly cancel the authority of the Superintendent of Insurance to accept service of process in its behalf. The act of North Carolina

permitting service to be made upon the Superintendent of Insurance provided that service might be made upon him so long as there was any liability outstanding under any contract entered into in pursuance of any law concerning insurance. The North Carolina judgment was sustained, the Court saying, at page 489:

> "When defendant commenced issuing policies in that State, after having complied with the conditions of the statute, its obligation towards its policy holders in that regard were precisely the same as if its promises to the State had been incorporated in the policies, and thereafter, whether the company continued to do business in the State or not, policy holders could commence actions by service of process upon the Secretary of State."

In *Johnston* v. *Mutual Reserve Life Ins. Co.* 104 N. Y. App. Div., 550, at page 557, the Court says:

> "The service of process is for the purpose of giving notice to the defendant and affording him or it an opportunity of defending the action. It is the settled policy of this State that it is within the province of the Legislature to prescribe what service shall be deemed sufficient, and that service upon a foreign corporation may be made within this State upon a person designated therefor or upon an officer or agent of the corporation, in certain cases prescribed in the Code of Civil Procedure, even though the corporation may not be doing business within the State and the officer or agent served was here only temporarily and on private business. (*Code Civ. Proc.*, Sec. 432; *Hiller* v. *Burlington & Missouri River R. R. Co.*, 70 N. Y. 223; *Pope* v. *Terra Haute Car Mfg. Co.*, 87 *id.* 137; *Tuchband* v. *Chicago & Alton R. R. Co.*, 115 *id.* 437; *Buell* v. *B. & O. S.*

W. R. R. Co., 39 App. Div., 236. See, also, *Persons* v. *Buffalo City Mills*, 29 *id.* 45; *Le Fevre* v. *Matthews*, 39 *id.* 232.)"

This Court, in *Mutual Reserve Fund Life Assn.* v. *Phelps*, 190 U. S., 147, held that it was not necessary that the defendant to be brought into court should be doing business within the State at the time of the service of process upon a designated agent.

In the *Phelps* case (*supra*) this Court had under consideration a Kentucky statute which provided that service on a foreign insurance company, doing business within that State, by service upon the Commissioner of Insurance, should be a "valid service upon the company." The Life Association consented that the Commissioner of Insurance of Kentucky should be authorized to receive service of process in its behalf. Subsequently, its right to do business within the State of Kentucky was cancelled by the Superintendent of Insurance. *Thereafter*, Phelps brought his action against the Life Association in Kentucky. The defendant moved to quash the service. Its motion was denied. The consequent judgment was sustained by this Court.

The Court held (headnote):

> "The cancellation, by the insurance commissioner of Kentucky, of the license to do business in that state, granted to an insurance company which had consented, pursuant to Kentucky Statute 1899, Section 631, that service of process upon such commissioner in any action brought in the state should be a valid service upon the company, does not render such service insufficient to bring that company into a court of the state as a party defendant to a suit brought by a

> citizen of such state upon a cause of action which arose out of transactions between the parties while the insurance company was carrying on business in Kentucky under the license."

Of course, the case at hand is stronger for plaintiff than the *Phelps* case, for in the case at hand the defendant had the right to do business within the State at the time of service of process, whereas, in the *Phelps* case, at the time of the service of the summons, the defendant had been excluded from the State and was prohibited from doing business therein.

There is a suggestion in the opinion of the Court that perhaps by the collection of premiums on policies existing between the Life Association and citizens of Kentucky, the Life Association continued to do business within the State of Kentucky. But, as pointed out by this Court in explaining the *Phelps* case, that did not constitute "doing business."

> *Hunter* v. *Mutual Reserve Life Ins. Co.*, 218 U. S., 573, at page 586.

In *Hill* v. *Empire State-Idaho Mining & Development Co.*, 156 Fed. Rep., 797, the action was brought by plaintiff, a citizen of Idaho, against defendant, a New York corporation. Service was made upon defendant's designated agent. The defendant moved to "set aside and quash the service of summons, on the ground that defendant was a foreign corporation, and that it did not, at the time of the commencement of this action, or the attempted service of the summons, own any property within the State of Idaho, and that it was not engaged in business in Idaho, etc." (p. 798).

It appeared as a fact that "the defendant, on or about the first day of September, 1903 (which date was prior to the service of process), sold all of its property in Idaho, and ceased to transact any business in the State, and dismissed from its service all of its employees, but that no affirmative action was taken either by it or by North relative to the statutory agency" (p. 799).

The position of the defendant there was precisely the same as the position now taken by this defendant. It contended that "before a court can exercise jurisdiction over a corporation organized under the laws of a foreign State, it must appear that such corporation as a matter of fact is carrying on business, etc." (p. 800).

In a most comprehensive review of all the authorities, and in a very able opinion, the District Judge (Judge Dietrich) sustained the service. He puts the case very aptly at page 809:

> "As the court records disclose, it is often a matter of extreme nicety to determine whether or not, at the time of service, a corporation was, in contemplation of law, 'doing business' within the state; and under such interpretation the sufficiency of the attempted service upon a designated agent would not infrequently be more difficult of adjudication than the merits of the controversy, for the moment a foreign corporation ceased in fact to 'do business,' however extensive its operations may have theretofore been, it would cease to be amenable to the process of the courts in Idaho, notwithstanding that through the public records of the state it continued to proclaim the authority of its designated agent. And if 'doing business' in the state implies, as some courts

have held, 'corporate continuity of conduct in that respect,' a foreign corporation might comply with the requirements of the act by filing its articles of incorporation and designating an agent, so as to have the advantages of that provision which confers upon it like privileges with domestic corporations, and yet flit into the state and out again in such a way that it would be almost impossible successfully to serve process upon it.

I have therefore concluded to hold that this act contemplates that where a foreign corporation, in order to acquire the privilege or franchise thereby conferred of transacting business and holding property in Idaho, has complied with the terms of the act, and has filed articles of incorporation and designated an agent, and has thereupon transacted business in the state, valid service of process in a suit against such corporation involving a controversy arising out of such business may be made upon its agent so designated, whether the service be made before or after the corporation ceases to transact business in the state."

A similar ruling was made by Judge Cushman in

Chehalis River Lumber & Shingle Co. v. *Empire State Surety Co.*, 206 Fed. Rep., 559.

State Courts have made similar rulings.

Johnson v. *Trade Ins. Co.*, 132 Mass., 432.
Wilson v. *Martin Wilson Fire Alarm Co.*, 149 Mass., 24, 27.
Ben Franklin Ins. Co. v. *Gillett*, 54 Md., 212.
Reeves v. *Southern Ry. Co.*, 121 Ga., 561.
Hawkins v. *Fidelity & Casualty Co.*, 123 Ga., 722.
Groel v. *United Electric Co.*, 69 N. J. Eq., 397.
Richmiller v. *Denver & Rio Grande R. R. Co.*, 134 Minn., 261.
Germania Ins. Co. v. *Ashby*, 112 Ky., 303.
State ex rel. Watkins v. *Land & Timber Co.*, 106 La., 621.
Patton v. *Casualty Co.*, 119 Tenn., 364.

If, therefore, at the time of service of the summons upon the designated agent, it was not necessary that the defendant should be actually engaged in business within the State of New York to give the Court jurisdiction over the person of the defendant, then there is no possible distinction between this case and the *Bagdon* case (*supra*), because here, as we have shown in our statement of facts, at and during the time the contracts between the plaintiff and the defendant were made and were in full force and effect, and at the time and times when the alleged breaches thereof occurred, the defendant was doing business within the State of New York.

The Court of Appeals has repeatedly held, under the Code of Civil Procedure, Section 432, Subdivision 1, that jurisdiction was acquired of a foreign corporation, although not doing business in this State, by service of process upon an officer temporarily and incidentally here.

Pope v. *Terra Haute Car Mfg. Co.*, 87 N. Y., 137.

Hiller v. *Burlington R. R. Co.*, 70 N. Y., 223.

Tuchband v. *Chicago & Alton R. R. Co.*, 115 N. Y., 437.

These views conflict with the decisions of this Court, that such service did not constitutionally bring the foreign corporation into court.

Riverside & Dam River Cotton Mills v. *Menefee*, 237 U. S., 189.

The Court of Appeals naturally was bound by the rulings of this Court, and to that extent its previous rulings must be deemed modified.

Robert Dollar Co. v. *Canadian Car & Foundry Co.*, 220 N. Y., 270.

But we have shown that the Court of Appeals in this case could constitutionally hold that service upon a designated agent would give to the Court jurisdiction of the person of the defendant. In these circumstances, it cannot be doubted that the Court would hold that the service was good.

The purpose of the act and the objects to be accomplished are clearly set forth in a very recent utterance of the Court of Appeals, in *Grant* v. *Cananea Consolidated Copper Co.*, 189 N. Y., 241, where the Court says, at page 247:

> "The great business and commercial transactions of our citizens are now largely conducted through corporations, and no reason is apparent why foreign corporations should

> be treated differently from foreign individuals. If our citizens have claims against such corporations or individuals, who can be found here within our jurisdiction, they should be permitted to apply to the courts for relief rather than be compelled to follow their debtors into foreign jurisdiction. It must be borne in mind that the provisions of the Code alluded to have reference to actions brought by residents of the state and not to actions brought by non-residents or foreign corporations. The provision with reference to bringing such actions is very different."

A construction of the statute as now claimed by the defendant would open the door to fraud.

As stated by Judge Dietrich, in the *Hill* case (*supra*), at page 801:

> "Corporations could come into a State, transact business, and incur obligations, and before process could be served upon them they could withdraw from the State, leaving unsatisfied their obligations; and a citizen in favor of whom, and in the State where, the obligation was incurred, would be compelled to seek the courts of the State where the corporation was organized, however inconvenient or inaccessible such courts might be."

This Court, in the *Phelps* case (*supra*), approved the language of the Kentucky Court, in which it is stated, at page 157:

> "Whatever limitation shall be applied to it (the statute) must be by implication. And when we consider the purpose of the act, it becomes clear that it would be frustrated by the construction contended for. There is

> no need of the right to serve process upon the insurance commissioner so long as the company has agents in the state, and we think the purpose of the section was to provide a means of obtaining service of process upon foreign companies which no longer had agents in states upon whom process might be served, etc."

These remarks are particularly appropriate to the case at hand, for the liability of the defendant was created while it was doing business within the State. The real question at issue is, can the defendant surreptitiously withdraw from the State and force the citizens of the State of New York to go to some far western State to enforce their claims without even cancelling the statutory designation? If so, it is being treated with extraordinary favor.

Defendant is not entitled to a strained construction of the statute which will force the plaintiff to go to some inconvenient forum to enforce its rights. No benefit would accrue to the defendant other than that arising from the inconvenience and disadvantage to the plaintiff in forcing it to go to such distant forum.

(C) At the time of the service of the summons, the defendant was doing business within the State of New York, so as to make it amenable to process.

We have already shown that at the time of the making of the contracts in question, and prior thereto, and while the same were in full force and effect, and at the time of the alleged breaches thereof, the defendant was doing business within the State of New York. It admittedly continued to

do a general business therein until at least August 16, 1916 (pp. 33-35).

Thereafter, by reason of its failure to revoke its certificate, it "had a principal place of business," as well as an agent "within the State." This was sufficient to bring the corporation within the State, so as to render it amenable to process.

> *Tauza* v. *Susquehanna Coal Co.*, 220 N. Y., 259.
>
> *Washington R. R. Co.* v. *Real Estate Trust Co.*, 238 U. S., 185.

> "Activities insufficient to make out the transaction of business, within the meaning of those statutes (referring to other statutes), may yet be sufficient to bring the corporation within the State so as to render it amenable to process" (*Tauza* case, *supra*, p. 267).

POINT III.

The judgment and order of the Court below should be reversed.

HAYS, HERSHFIELD & WOLF,
Attorneys for Plaintiff-in-Error.

DANIEL P. HAYS and RALPH WOLF,
of Counsel for Plaintiff-in-Error.

No. 516

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JAMES D. MAHER,
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Supreme Court of the United States

OCTOBER TERM, 1919

CHIPMAN, LTD.,
Plaintiff-in-Error,

against

THE THOMAS B. JEFFERY COMPANY,
Defendant-in-Error.

Brief on Behalf of Defendant-in-Error.

PHILIP B. ADAMS,
Attorney for Defendant-in-Error.

THOMAS M. KEARNEY,
Of Counsel.

B. H. Tyrrel, Printer, 206-8 Fulton Street, New York.

Supreme Court of the United States.

CHIPMAN, LIMITED.,
Plaintiff-in-Error,

against

THE THOMAS B. JEFFERY COMPANY,
Defendant-in-Error.

October Term, 1919.
Numbered 516.

Brief on Behalf of Defendant-in-Error.

Statement.

The controlling facts, some of which are admitted and are shown conclusively by this record are as follows:

(a) The defendant was and always has been a foreign corporation of the jurisdiction in which this action was commenced.

(b) The contracts were made and executed at Kenosha, in the State of Wisconsin.

(c) The record shows that the contracts were to be there performed.

(d) The Corporation ceased to transact any business within the State of New York after the 16th day of August, 1916.

(e) The Corporation through inadvertance neglected to revoke its consent for the service of process at the time it ceased to do business in the State of New York.

(f) That it was not doing business in the State of New York at the time of the commencement of this action.

POINT I.

The New York Statute Relates Solely and Exclusively to Business Transacted Within That State.

The Statute under which this consent was executed and filed with the Secretary of State deals solely with the right of a foreign corporation to transact business within the State of New York, and also prohibits the corporation from maintaining an action in its courts on any cause of action arising out of the business transacted within the State upon its failure to comply with this Statute. In compliance with this Statute, the corporation is obliged to show:

> "The business or objects of the corporation which it is engaged in carrying on, or which it proposes to carry on within the State."

The foreign corporation might have had numerous powers and objects that it exercised at its

domicile and might have made application to exercise only an insignifcant part or portion of those powers within the State of New York, and it was only in relation to those powers or objects to be exercised within the State of New York that the Legislature was concerned. It is true that it was compelled to submit a certified copy of its Certificate of Incorporation, and it is likewise true that it was bound to set forth what part or portion of those powers it proposed to exercise or carry on within the State of New York. The sole object of the Statute is to ascertain the particular business that the Corporation intended or proposed to carry on in New York and to license only that part or portion that it proposed to carry on in the State. It was then obliged to state—

> "its principal place of business",

and it was further obligated to

> "designate a person upon whom process against the Corporation may be served within the State."

This seems to be the subject matter of the entire act, all of the rest being matters of form and method of carrying into effect the real subject matter of the Act. When the Act of the Legislature is thus analyzed, the conclusion is obvious that it relates solely to the business transacted within the State of New York.

POINT II.

If This Consent Was a Contract, Its Limitations Were Mutual.

It is expressed by the Court of Appeals in the Bagdon case that the certificate and consent filed by the foreign corporation was a "true contract" and a "real consent".

The State of New York by that contract granted to the foreign corporation the privilege of transacting business within the State of New York and of maintaining an action arising out of the transaction of any such business in the Courts of that State. The grant was confined to the territorial limits of the State. The certificate and consent does not enumerate the causes of action upon which process may be served, nor does it state the nature of those actions. It must be contended that while the grant of power or privilege by the State was limited to its borders, the consent executed by the defendant corporation was unlimited and comprised every transitory action of which the Courts of New York would have jurisdiction of the subject matter regardless of the origin of the cause of action or of the place where it arose. This makes the contract operative as to the State within its borders and extra-territorial as to the corporation in any transitory action.

The plaintiff-in-error asserts that the consent was made in view of Section 1780 of the New York Code, which provides that

> "A cause of action may be maintained by a Domestic Corporation against a foreign corporation for any cause of action",

and that it is immaterial where the cause of action had its origin or arose if it is transitory. We believe that one observation will dispose of this contention, and that is that Section 1780 of the Code of Civil Procedure of New York relates solely to the subject matter of causes of action in the Courts of that State. Relating as it does exclusively to the jurisdiction of the Court over the subject matter of the action, it does not have any connection with the Act of the Legislature under which this designation was made. Section 432 of the Code provides the method of serving a summons upon a foreign corporation. Subdivision 2 of that section provides that the service may be made by delivering a copy of the summons "to a person designated for the purpose as provided by Section 16 of the General Corporation Law." This section does not attempt to enumerate or state in what causes of action a summons may be served, and bears no connection or relation to Section 1780 of the Code except as defining another step in a legal proceeding of which the Court had jurisdiction. If therefore, we should be permitted to answer each of these sections of the Code separately, we would say in relation to Section 1780, that an action may be maintained against a foreign corporation for any cause of action

> "if the defendant is doing business within the State and is found within the State".

And in relation to Section 432 of the Code:—

> "2. To a person designated for the purpose as provided by Section 16 of the General Corporation Law",

if the Corporation is doing business within the State and the cause of action is in relation to business transacted by it within the State.

And to Section 16 of the General Corporation Law:—

> "upon whom process against the corporation may be served within the State"

would be made clear if there was added thereto the phrase "growing or arising out of any business transacted by the Corporation within the State.

Each of these statutes are independent of the other and were enacted for an entirely different purpose. These sections of the Code are not therefore any part of the consent filed by the defendant. Neither are they incorporated into nor have they become any part of Section 16 of the General Corporation Law, and are only statutes defining jurisdiction of the subject matter and the method of the service of process against a foreign corporation, and leave Section 16 of the General Corporation Law standing alone and independent.

POINT III.

The prohibition contained in the statute emphasizes the construction that its whole subject matter pertains only to business transacted within the State.

The words of the prohibition are found in Section 15 and are as follows:—

> "No foreign stock corporation doing business in this State shall maintain any action

> in this State upon any contract made by it in this State unless prior to the making of such contract it shall have procured such certificate."

This relates to the certificate issued by the Secretary of State that it has complied with the conditions of the Statute and is authorized to transact business within the State. This is the only penalty, and it operates only against business done "in this State" and to an action commenced "in this State" and on a contract made by it "in this State". The Legislature was so careful to express the limitation of business transacted, actions commenced, and contracts made *"in this State"*, that it uses the phrase "in this State" three times in the one sentence.

If the foreign corporation did not carry on a business within the State marked with some degree of permanence and continuity, it was then unnecessary for it to comply with this Statute, and still it could bring an action on a contract made by it within the State of New York in the Courts of New York. This is shown by the Court of Appeals of New York in the case of *Penn Collieries Co.* v. *McKeever*, 183 N. Y. 98, where the Court said at Page 102:

> "The rule was early declared that, unless interdicted by the state, a foreign corporation could perform within its boundaries single corporate acts, or conduct its corporate business, when not prohibited by our laws, or when not violative of public policy, (Bard *v.* Poole, 12 N. Y. 495; Hollis *v.* Drew Theological Seminary, 95 ib. 166), and the enactment of the present General Corporation Law was intended to regulate its existence here, if proposing to conduct a business, by the im-

> position of reasonable conditions. But no such narrow policy was intended to be declared by the statute as the prohibition of all corporate transactions by foreign corporations, irrespective of their nature, or of the condition under which they occurred; nor does the language indicate it. To bring into operation the statutory provision, the facts should show more than a solitary, if not accidental, transaction as was the one before us. They should establish that the corporation was conducting a continuous business. To be "doing business in this State" implies corporate continuity of conduct in that respect; such as might be evidenced by the investment of capital here, with the maintenance of an office for the transaction of its business, and those incidental circumstances, which attest the corporate intent to avail itself of the privilege to carry on a business. In short, it should appear, as it was intimated in the opinion in *People ex rel. Armstrong Cork Co.* v. *Barker*, (157 N. Y. 159, 165), that the corporation and its officers intended "to establish a continuous business in the City of New York and not one of a temporary character."

This proposition is only cited to show that the Act under consideration should be held to apply only to contracts made and business transacted within the State, for the additional reason that the prohibitory clause of the Statute pertains only to business transacted within the State, and such a business as is marked by permanency and continuity.

POINT IV.

The corporation had wholly ceased to do business within the State long before the commencement of this action, and the cause of action neither had its origin nor did it arise within the State of New York.

It is not disputed that the Corporation wholly ceased to transact any business within the State of New York after the 16th day of August, 1916, and therefore, at the time of the commencement of this action was not "doing business" within the State of New York.

In Exhibits A, B, and C attached to the complaint in this action are found the contracts upon which the cause of action is founded. It is to be noted, first, that in the territory granted to the plaintiff, (the agent in said contracts), it did not include the City of New York or any territory within the State of New York, or within the Southern District thereof, but included only foreign countries.

In each of the contracts, the defendant

> "agrees to sell and deliver to said Distributor, (the plaintiff), at Kenosha, Wisconsin",

and again:—

> "The Distributor, (the plaintiff), agrees to pay for motor trucks purchased hereunder, at Kenosha, Wisconsin".

The contracts were executed and delivered at Kenosha, Wisconsin, and the sale and delivery by the defendant was to be made at Kenosha, Wis-

consin, and even the second sale by the Distributor to the ultimate purchaser was to be made in foreign countries, and not to be made within the State of New York or within the Southern District thereof, so that the origin of the cause of action was at Kenosha, in the State of Wisconsin. The place of the performance of the contract was at Kenosha. The place of payment was at Kenosha, Wisconsin, and the cause of action, therefore, had its origin at that place, and if there was any breach of the contract it must have occurred at Kenosha, Wisconsin. Therefore, the conclusion is unanswerable that the Corporation was not doing business within the State of New York at the time of the commencement of the action and that the cause of action had its origin and arose at Kenosha, in the State of Wisconsin.

It is stated in the plaintiff's brief at page 7, that the contract "might be performed within the State of New York", and further quotes Section 2 of the Contract marked Exhibit A, attached to the complaint, which provides that the defendant "reserves the right to fill the orders of the plaintiff for motor cars from its depots at New York." This is only incidental to the contract, and the same clause provides that the distributor shall pay freight on those identical cars from Kenosha to New York, showing that the reservation contemplated a sale and delivery at Kenosha, Wisconsin, even though some of the motor cars might be delivered from its storage depot in New York, but the obvious answer to this proposition is that the contract was not performed in New York, and it is not for any breach of the contract at New York that the suit is brought.

POINT V.

The extra-territorial extension of the operation of this statute would read into it an addition that was foreign to the purpose of the Legislature.

We have seen that the Act of the Legislature does not contain any express limitation as to causes of action that might be commenced against a foreign corporation within the State. The Act provides:—

> "and designating a person upon whom process against the Corporation may be served within the State."

The Courts are asked to construe this sentence to mean that process may be served in any action of which the Courts of New York have jurisdiction. The consent was filed in consideration of the privilege of doing business within the State and of maintaining actions in relation to that business in the Courts of the State, and now it is sought to enlarge this Statute and compel the foreign corporation to answer and defend any transitory action, regardless of its origin or of the place where it arose, of which the Courts of the State of New York would have jurisdiction of the subject matter by reason of the Corporation having executed and filed this consent.

It is true that the State was in the exercise of its right to compel a foreign corporation to comply with any reasonable condition in return for the privilege of doing business within that State. The corporation could have transacted business within

the State and enforced its contracts without compliance with this Statute, and the only penalty would have been that it could not have maintained an action on those contracts in the State courts, but the Statute did not attempt to declare the contracts illegal. It only prohibited a corporation from maintaining an action on them in the State Courts of New York. Every word of the Statute relates to business transacted within the State of New York, and there is not even an inference of business transacted beyond its borders, and there is even less of an intention anywhere expressed in the Act of the Legislature or in the consent filed by the Corporation that it should operate beyond the territorial limits of the State of New York. To give the Statute such an enlarged construction would result in extraordinary hardship and inconvenience to the corporation. An obvious illustration would be the trial of an action in the Courts of the State of New York, which had its origin and arose in a distant state or a foreign country, and the attendance of counsel and the trial of that action by depositions of numerous witnesses at the place of the origin of the cause of action or its breach. Many other illustrations could be cited, but those are all of common knowledge and will readily suggest themselves to the Court. It was neither the intention of the foreign corporation nor of the Legislature to legislate in relation to any causes of action arising outside of the State of New York. And to place such a construction on this Statute, and enlarge it and give it this extra-territorial extension is in conflict with the familiar ruling of this Court as is laid down in the case of

U. S. v. *Kirby*, 7 Wall. 482, at page 486, where Mr. Justice Field, in speaking for the court, said:

> "All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language, which would avoid results of this character. The reason of the law in such cases should prevail over its letter."

The purpose of the Statute is plain, and to give the general term "service of process against the corporation" a meaning or interpretation that reads into it "any cause of action" comes within the condemnation of this rule.

POINT VI.

The process of reasoning by which this statute is given an extra-territorial extension is founded on a false premise.

Section 16 of the General Corporation Law and the two sections of the New York Code above referred to seem to have been construed by the Courts as one Act of the legislature.

In this process of reasoning, Section 1780 of the Code is first taken, and it provides that an action may be maintained against a foreign corporation by a resident or domestic corporation for any cause of action. Then Section 432 is taken, providing that a summons may be served

"upon a person designated for that purpose." Reading the three in conjunction, the conclusion is reached that if the Corporation has come into the State for any purpose it may be sued on any cause of action, and the summons may be served upon a person designated for that purpose.

The obvious error in this line of reasoning is that no consideration is given to the limited purposes for which the Corporation came into the State. It came for the purpose of transacting a portion of its business within the State, and naturally intended to submit to the jurisdiction of the State of New York only that part of its business that it transacted within its borders. If the plain intent of the Corporation and its business transactions were to be given consideration, it intended as a matter of fact to transact only a portion of its business in that jurisdiction, and this controlling feature or fact seems to be entirely ignored in reaching the conclusion that it may be sued for any cause of action. By such reasoning the Corporation would submit any or all of its disputes or litigation to the Courts of the State of New York, and still transact only a limited part of its business within that State.

If the limited purpose of the Corporation in coming into the State was to be given its true consideration, then these Statutes should have the same limited application, and that obviously would be to business transacted by it within the State.

POINT VII.

The controlling reason for the lack of jurisdiction of the person of the defendant:

The foreign Corporation at the time of the commencement of this action was not doing business within the State and the cause of action did not have its origin or arise therein.

We have not laid stress upon the neglect or failure of the Corporation to revoke this designation at the time that it withdrew from the State in August of 1916, for the reason that the principle of compelling a foreign corporation to answer a cause of action that had its origin and arose without the State, even though it be found there for a limited purpose is of more far reaching importance than the inadvertence of revoking the designation.

We attach but slight significance and little importance to the clerical act of revoking this designation, because we believe that it was in effect revoked when the Corporation ceased to do business within the State. This inadvertence, however, is the sole claim to jurisdiction in this case. But interwoven with that claim is the more important proposition of whether jurisdiction *in personam* may be obtained over a corporation to litigate a cause of action having its origin and arising without the State.

Judge Learned Hand, in speaking of a similar consent, but where the corporation was actually doing business in the State, said in *Smolik* v. *Philadelphia & Reading Coal & Iron Co.*, 222 Fed. Rep. at page 151:

> "The actual consent in the cases at bar has no such latitudinarian possibilities; it must

> be measured by the proper meaning to be attributed to the words used, and, where that meaning calls for wide application, such must be given."

There is nothing in this consent that shows the meaning of the words used to have a "wide application," but on the contrary, when the consent is read in conjunction with the Act of the Legislature, it shows conclusively that it was limited to business done within the State of New York.

Judge Cardoza, speaking of a similar consent in a case where the corporation was actually doing business in the State, in the *Bagdon* case, *supra*, said, at page 436:

> "The person designated is a true agent. The consent that he shall represent the corporation is a real consent. He is made the person 'upon whom process against the corporation may be served.' The actions in which he is to represent the corporation are not limited. The meaning must, therefore, be that the appointment is for any action which under the laws of this State may be brought against a foreign corporation (Code Civ. Pro., Sees. 1780, 432). The contract deals with jurisdiction of the person. It does not enlarge or diminish jurisdiction of the subject-matter. It means that whenever jurisdiction of the subject-matter is present, service on the agent shall give jurisdiction of the person."

There being no express limitations in the Act or in the consent filed under the Act, it must therefore mean any cause of action of which the Courts of New York had jurisdiction of the subject-matter. This again, as we have pointed out, fails to take into consideration the limited purposes for which the Corporation entered the

State, the limited privileges it obtained, and the limited consent it filed, even though such limitation was not expressed in the consent.

We believe this motion is authorized in that part of the opinion of this Court in *Simon* v. *Southern Railway*, 236 U. S. 115, where this Court said at page 130:

> "Subject to exceptions, not material here, every State has the undoubted right to provide for service of process upon any foreign corporations doing business therein; to require such companies to name agents upon whom service may be made; and also to provide that in case of the company's failure to appoint such agent, service, in proper cases, may be made upon an officer designated by law. *Mutual Reserve Ass'n* v. *Phelps*, 190 U. S. 147; *Mutual Life Ins. Co.* v. *Spratley*, 172 U. S. 603. But this power to designate by statute the officer upon whom service in suits against foreign corporations may be made relates to business and transactions within the jurisdiction of the State enacting the law. Otherwise, claims on contracts wherever made and suits for torts wherever committed might by virtue of such compulsory statute be drawn to the jurisdiction of any State in which the foreign corporation might at any time be carrying on business. The manifest inconvenience and hardship arising from such extra-territorial extension of jurisdiction, by virtue of the power to make such compulsory appointments, could not defeat the power if in law it could be rightfully exerted. But these possible inconveniences serve to emphasize the importance of the principle laid down in *Old Wayne Life Association* v. *McDonough*, 204 U. S. 22, that the statutory consent of a foreign corporation to be sued does not extend to causes of action arising in other States."

We respectfully submit that this is the outstanding and far-reaching proposition presented by this record, of whether a corporation, after it has ceased to do business within a State, may be compelled to answer in the courts of that State a cause of action that had its origin and arose without that State.

POINT VII.

The judgment and order of the Court below should be affirmed.

Very respectfully submitted,

PHILIP B. ADAMS,
Attorney for Defendant-in-Error.

THOMAS M. KEARNEY,
Of Counsel for Defendant-in-Error.

CHIPMAN, LIMITED, *v.* THOMAS B. JEFFERY COMPANY.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 516. Submitted December 8, 1919.—Decided January 19, 1920.

By the law of New York, when a foreign corporation, as a condition to doing local business, appoints an agent upon whom process may be served and subsequently removes from the State, service on such agent, though his appointment stand unrevoked, will not confer jurisdiction in an action by a local corporation upon a contract between it and such foreign corporation but made and to be performed in another State, when it is not shown that anything was done in New York in the way either of performance or breach of the contract; and it is not material that the foreign corporation was there doing business during a period when the contract was made and should have been performed. P. 378.

Such a case must be dismissed for want of jurisdiction upon removal to the District Court from the Supreme Court of New York. *Id.* 260 Fed. Rep. 856, affirmed.

THE case is stated in the opinion.

Mr. Daniel P. Hays for plaintiff in error. *Mr. Ralph Wolf* was on the brief.

The defendant having filed an express consent that made service upon its designated agent the equivalent of personal service, no constitutional question is involved. *Pennsylvania Fire Ins. Co.* v. *Gold Issue Mining Co.*, 243 U. S. 93; *Gibbs* v. *Queen Ins. Co.*, 63 N. Y. 114, 128. The offer of the State and the acceptance thereof by the defendant constituted a contract. The agreement was, among other things, that service could be made upon the statutory agent until his designation was revoked. In its acceptance of the offer of the State, the defendant became entitled to the same right to transact business as a domestic corporation, *Lancaster* v. *Amsterdam Improvement Co.*, 140 N. Y. 576, 588; and to invoke the statute of limitations, as if it were a domestic corporation, *Wehrenberg* v. *New York, New Haven & Hartford R. R. Co.*, 124 App. Div. 205; *cf. Olcott* v. *Tioga R. R. Co.*, 20 N. Y. 210. The case is entirely different from *Old Wayne Mutual Life Assn.* v. *McDonough*, 204 U. S. 8, and *Simon* v. *Southern Ry. Co.*, 236 U. S. 115, for the reason that in them the foreign corporations had not designated an agent upon whom process could be served.

The Supreme Court of New York has jurisdiction of an action by plaintiff, a domestic corporation, against the defendant, a foreign corporation, for a cause of action based on contract. New York Code Civ. Proc., § 1780. Jurisdiction does not fail because the cause of action sued upon has no relation in its origin to the business in New York. *Tauza* v. *Susquehanna Coal Co.*,

220 N. Y. 259, 268; *Grant* v. *Cananea Consol. Copper Co.*, 189 N. Y. 241.

It is equally clear that the service of the summons upon the designated agent gave to the court jurisdiction over the person of the defendant. New York Code Civ. Proc., § 432. In the case of a designated agent no limitation of any kind is imposed. *Bagdon* v. *Philadelphia & Reading C. & I. Co.*, 217 N. Y. 432, 436. There is only one possible distinction. In the *Bagdon Case* the defendant was doing business within the State of New York at the time of service of the summons. In the case at hand, it is conceded that when the contracts in question were made and when the alleged breaches thereof occurred the defendant was doing business within the State. But § 432, *supra*, does not require, in the case of a designated agent, that the corporation should be doing business within the State at the time of the service of the summons. The designation remains in effect, *Woodward* v. *Mutual Reserve Life Ins. Co.*, 178 N. Y. 485; *Johnston* v. *Mutual Reserve Life Ins. Co.*, 104 App. Div. 550, 557. See *Mutual Reserve Life Assn.* v. *Phelps*, 190 U. S. 147; *Hunter* v. *Mutual Reserve Life Ins. Co.*, 218 U. S. 573, 586; *Chehalis River Lumber Co.* v. *Empire State Surety Co.*, 206 Fed. Rep. 559; and many state cases. There is no possible distinction between this and the *Bagdon Case*, *supra*, because here, at and during the time the contracts between the plaintiff and the defendant were made and were in full force and effect, and at the times when the alleged breaches thereof occurred, the defendant was doing business within the State of New York. See *Grant* v. *Cananea Consol. Copper Co.*, 189 N. Y. 241, 247. The real question at issue is, can the defendant surreptitiously withdraw from the State and, without even cancelling the statutory designation, force the citizens of the State of New York to go to some far western State to enforce their claims?

At the time of the service of the summons, the defendant was doing business within the State of New York, so as to make it amenable to process. By reason of its failure to revoke its certificate, it had a principal place of business, as well as an agent within the State. This was sufficient to bring the corporation within the State, so as to render it amenable to process. *Tauza* v. *Susquehanna Coal Co., supra; Washington-Virginia Ry. Co.* v. *Real Estate Trust Co.*, 238 U. S. 185.

Mr. Philip B. Adams and *Mr. Thomas M. Kearney* for defendant in error.

Mr. Justice McKenna delivered the opinion of the court.

Plaintiff in error was plaintiff in the courts below; defendant in error was defendant, and we shall refer to them respectively as plaintiff and defendant.

The action was brought in the Supreme Court of the State of New York and removed upon motion of the defendant to the District Court of the United States for the Southern District of New York. In the latter court defendant made a motion for an order vacating and setting aside the service of summons, and dismissing the complaint for lack of jurisdiction of the person of the defendant. The motion was granted and the case is here on the jurisdictional question only.

A brief summary of the grounds of action and the proceedings upon the motion to dismiss is all that is necessary. Plaintiff is a New York corporation, defendant one under the laws of Wisconsin, and a manufacturer and seller of motor cars known as the "Jeffery" and "Rambler" and parts thereof, and motor trucks and parts thereof. By contracts, in writing, made in Wisconsin by the plaintiff and defendant it was agreed that the former should have the sole right to sell the motor cars and parts

thereof (first cause of action) and the motor trucks and parts thereof (second cause of action) of defendant in Europe and certain other foreign places and to receive certain designated percentages. The contracts as to motor cars and their parts and the trucks and their parts, provided that they (cars, trucks, and parts) should be sold and delivered to plaintiff (called in the contracts the "Distributor") at Kenosha, Wisconsin, for sale at the designated places by plaintiff, defendant reserving the right to fill the orders of plaintiff (Distributor) for the cars, trucks and parts, from any of defendant's depots in New York City. Cars and trucks purchased under the contracts to be paid for at Kenosha. Both contracts continued in effect to July 31, 1915.

There are allegations of performance of the contracts by plaintiff, their non-performance by defendant whereby plaintiff on one cause of action was entitled, it is alleged, to $280,000 and upon the other $600,000. Judgment is prayed for their sum, to wit, $880,000.

The District Court has certified three questions, but as the first includes the other two we give it only as it sufficiently presents the question at issue: "Whether in the service of the summons, as shown by the record herein, upon Philip B. Adams, this court acquired jurisdiction of the person of the defendant."

Plaintiff contends for an affirmative answer and adduces the New York statute which requires of corporations not organized under the laws of New York as a condition of doing business in the State to file in the office of the secretary of state a stipulation designating "a place within the State which is to be its principal place of business, and designating a person upon whom process against the corporation may be served within the State," and the person designated must consent and the designation "shall continue in force until revoked by an instrument in writing" designating some other person.

Defendant complied with the requirements of the statute July 6, 1914, designating 21 Park Row, New York, as its place of business and Philip B. Adams as its agent upon whom process might be served. The designation and appointment have not been revoked.

It is not denied, however, that defendant had removed from the State before service on Adams, and, as we have stated, the contracts sued on made the place of their performance Kenosha, Wisconsin. But, in emphasis of the requirement of the statute, it is urged, that at all of the times of the duration of the contracts sued on and their breaches defendant was doing business in the State, and at any time had the right to transact business in the State. It is further urged, that the contracts contemplated they might be performed within the State. There is no allegation of such performance nor that the present causes of action arose out of acts or transactions within the State. The other circumstances of emphasis may be disregarded, as the validity of the service depends upon the statute assuming it to be controlling, that is, whether under its requirements the unrevoked designation of Adams as an agent of defendant gave the latter constructive presence in the State. And making that assumption of the control of the statute, which we do in deference to counsel's contention, for light we must turn to New York decisions, and there is scarcely ambiguity in them though the facts in none of them included an actual absence from the State of the corporation with which the cases were concerned.

Bagdon v. *Philadelphia & Reading Coal & Iron Co.*, 217 N. Y. 432, passed upon the effect of a cause of action arising out of the State, the corporation, however, doing business within the State, and having complied with the statute in regard to its place of business and the designation of an agent upon whom process could be served. But the court throughout the opinion with conscious so-

licitude of the necessity of making the ground of its decision the fact that the corporation was doing business in the State, dwelt upon the fact and distinguished thereby, *Old Wayne Mutual Life Assn.* v. *McDonough*, 204 U. S. 8, and *Simon* v. *Southern Ry. Co.*, 236 U. S. 115, in both of which the causes of action were based on transactions done outside of the States in which the suits were brought.

Tauza v. *Susquehanna Coal Co.*, 220 N. Y. 259, is nearer in principle of decision than the case just commented upon. The question of the doing of business within the State by the coal company was in the case and was discussed. But the question was unconnected with a statutory designation of a place of business or of an agent to receive service of process. However, there was an implication of agency in the coal company's sales agent under other provisions of the Code of Civil Procedure of the State and it was considered that the principle of *Bagdon* v. *Philadelphia & Reading C. & I. Co.*, *supra*, applied. But the court went further and left no doubt of the ground of its decision. It said, "Unless a foreign corporation is engaged in business within the State, it is not brought within the State by the presence of its agents," citing and deferring to *St. Louis Southwestern Ry. Co.* v. *Alexander*, 227 U. S. 218. And further said, "The essential thing is that the corporation shall have come into the State." If prior cases have a different bent they must be considered as overruled, as was recognized in *Dollar Co.* v. *Canadian Car & Foundary Co.*, 220 N. Y. 270, 277.

In resting the case on New York decisions we do not wish to be understood that the validity of such service as here involved would not be of federal cognizance whatever the decision of a state court, and refer to *Pennoyer* v. *Neff*, 95 U. S. 714; *St Louis Southwestern Ry. Co.* v. *Alexander*, *supra*; *Philadelphia & Reading Ry. Co.* v. *McKibbin*, 243 U. S. 264; *Meisukas* v. *Greenough Red*

Ash Coal Co., 244 U. S. 54; *People's Tobacco Co.* v. *American Tobacco Co.*, 246 U. S. 79.

It follows that the District Court did not have jurisdiction of defendant and its order and judgment dismissing the complaint is

Affirmed.